



FEDERAL ACQUISITION CIRCULAR

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Number 90-8

Federal Acquisition Circular (FAC) 90-8 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-8 is effective November 25, 1991.

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The clause is revised to state that the Government will provide the contractor, within 10 days after date of contract award, a list of employees adversely affected or separated as a result of award of a contract under OMB Circular A-76 procedures. The clause will also require the contractor to report to the contracting officer the names of individuals on the list who are hired within 90 days after contract performance begins. The prescription at 7.305(c) is changed to permit variance of the 10 day period "up to a period of 90 days."

Replacement pages: 7-7, 7-8, and 52-16.1

**Item II—Miscellaneous Federal Supply Revisions
(FAR Case 91-40)**

The Councils have approved revisions of FAR sections 8.401(b) and 38.201(b) in order to update office symbols and address changes. In addition, they have approved an amendment to 51.103(b), which requires the contracting officer instead of the contracting agency to notify GSA when a Federal Supply Schedule contractor does not accept an order from an authorized Government contractor.

Replacement pages: 8-7, 8-8, 38-1, 38-2, 51-1, and 51-2

Item III—Safety and Occupational Health (FAR Case 88-64)

The FAR is being modified by revisions to FAR 9.104-1, 22.102-1, 22.102-2, 23.301, 23.302, 23.303, 36.513, and the clauses at 52.223-3, 52.236-7, and 52.236-13. In addition, revisions have added Subpart 23.6, Notice of Radioactive Material, and a clause at 52.223-7 concerning radioactive material. The major changes (a) add "safety programs" to section 9.104-1 as an example of an element which may be applicable to responsibility determinations; (b) clarify the role of the Occupational Safety and Health Administration (OSHA) regulations at 22.102-2; (c) revise the requirements for submission of the Material Safety Data Sheets required by 29 CFR 1910.1200; (d) add coverage and contractual

Item IV—Consultants—Conflict of Interest (FAR Case 90-18)

The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are converting the interim rule on Consultants Conflict of Interest, published in the Federal Register (55 FR 42684) on October 22, 1990, to a final rule. The exclusions found in 9.502(d) of the interim rule were moved to 9.507-1(d) to more accurately reflect current policy. In addition, several editorial revisions were made to 9.504(e), 9.505(b), 9.505-4(a), and the provisions at 52.209-7 and 52.209-8.

Replacement pages: 9-17 thru 9-23, and 52-21 thru 52-24

**Item V—Quality and Contractor Responsibility
(FAR Case 90-37)**

This rule amending paragraph (c) of section 9.104-3 emphasizes that the contracting officer shall consider a contractor's failure to meet quality standards in contracts in determining the contractor's responsibility.

Replacement pages: 9-1 and 9-2

Item VI—Surety Bond Waiver Authority (FAR Case 91-35)

FAR 19.808-1(b) is amended to extend the Small Business Administration authority to exempt section 8(a) contractors from Miller Act bonding requirements from October 1, 1992, to October 1, 1994.

Replacement pages: 19-43 and 19-44

Item VII—Revision to the Prescriptions to FAR 25.109 (a) and (d) (FAR Case 90-45)

FAR 25.109 (a) and (d) are amended to eliminate the unnecessary use of the provision at 52.225-1, Buy American Certificate, and the clause at 52.225-3, Buy American Act-Supplies. The change to FAR 25.109(a) limits the use of the certificate at 52.225-1 to when the clause at 52.225-3 is required. The change to FAR 25.109(d) modifies the exceptions to the use of the clause at 52.225-3, Buy American Act-Supplies.

Replacement pages: 25-3 and 25-4

~~Technical Amendments and Corrections~~
The following items are technical amendments and corrections of errors, omissions or inconsistencies to previously published items in the FAR:

CHAPTER 1 [Nomenclature change]

1. The following pages are republished to correct the title "Appendix A to Part 39" to read "Appendix A to the FAR":

- a. General Structure of the FAR;
- b. The Table of Contents to Part 39;
- c. Page 39-1 (section 39.002(b)); and
- d. Appendix A to Part 39 (title page).

Replacement pages: General Structure (pps. 1&2), TOC Part 39, 39-1, Appendix A to the FAR (title page)

2. Appendix A is relocated to the end of the FAR directly behind the end of Part 53 under the tab labeled "Appendices".

Replacement pages: 39-i thru 39-iii, 39-1 thru 39-16

PART 6—COMPETITION REQUIREMENTS

6.302-1 [Technical correction]

3. Section 6.302-1 is corrected by removing the dash from the end of paragraph (a)(2) and inserting a period in its place.

Replacement pages: 6-3 and 6-4

"9.506(d)" in its place.

Replacement pages: 9-21 and 9-22

19.804-3 [Technical correction]

5. Section 19.804-3 is amended in paragraph (c) (2) by removing the reference "5.205(e)" and inserting "5.205(f)" in its place.

PART 42—CONTRACT ADMINISTRATION

42.1204 [Technical correction]

6. Section 42.1204 is corrected at the end of the "Novation Agreement" following paragraph (e) by adding two Certification statements which were inadvertently removed.

Replacement pages: 42-19 thru 42-22

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.214-17 [Technical correction]

7. Section 52.214-17 is amended at the end of the provision by removing "(End of clause)" and inserting in its place "(End of provision)".

52.232-20 [Technical correction]

8. Section 52.232-20 is corrected in paragraph (e) in the first sentence by removing "hall" and inserting in its place "shall".

Replacement pages: 52-177 and 52-178

PART 53—FORMS

10. The table of contents for Part 53 is republished to accurately reflect the order of the part, i.e., table of contents, general information about forms page, illustrations of forms, and forms authorized for local reproduction.

Replacement pages: Part 53 Table of Contents

11. A forms information page should be inserted in Part 53 behind page 4 of the table of contents.

Replacement pages: None

53.202 [Reserved heading removed]

12. The second section heading reading "53.202 Reserved" is removed.

Replacement pages: 53-1 and 53-2

53.301-30 [Technical correction]

13. A pen-and-ink change should be made to the FAR reference at the top right hand corner of Standard Form 30 by correcting it to read "53.301-30".

Replacement pages: None

53.301-1421 [Technical correction]

14. A pen-and-ink change should be made to the FAR reference at the top left hand corner of the reverse side of Standard Form 1421 by correcting it to read "53.301-1421".

Replacement pages: None

15. The **Notice** pages located entirely at the end of the FAR are revised.

Replacement pages: **Corrections and Subscription Problems**
forms (5 pages)

6-5 and 6-4

7-7 and 7-8

8-7 and 8-8

9-1 and 9-2
9-17 thru 9-23

19-41 thru 19-44

22-1 thru 22-4

TOC Part 23
23-1 thru 23-5

25-3 and 25-4

36-5 and 36-6

TOC Part 37
37-3 and 37-4

38-1 and 38-2

TOC Part 39
39-1

Appendix A to
Part 39 (title page)

39-i thru 39-iii
39-1 thru 39-16

42-19 thru 42-22

51-1 and 51-2

6-5 and 6-4

7-7 and 7-8

8-7 and 8-8

9-1 and 9-2
9-17 thru 9-23

19-41 thru 19-44

22-1 thru 22-4

TOC Part 23
23-1 thru 23-6

25-3 and 25-4

36-5 and 36-6

TOC Part 37
37-3 and 37-4

38-1 and 38-2

TOC Part 39
39-1

None (insert new
title page behind
"Appendices" tab
at end of FAR)

Transfer pages 39i thru
39-16 from Part 39 to
Appendix A to the FAR

42-19 thru 42-22

51-1 and 51-2

52-33 and 52-34
52-109 thru 52-114.1
52-177 and 52-178
52-191 thru 52-196
52-267 and 52-268
52-321 thru 52-322.1

TOC Part 53
(pp. 1 thru 4)

None

53-1 and 53-2

None

"Notice" pages -
(located at the end
of the FAR)

52-33 and 52-34
52-109 thru 52-114.1
52-177 and 52-178
52-191 thru 52-196
52-267 and 52-268
52-321 thru 52-322.1

TOC Part 53
(pp. 1 thru 4)

General Information
about Forms
(insert following
Part 53 Table of
Contents)

53-1 and 53-2

Insert new Appendix A
title page behind
"Appendices" tab
following Part 53

**"Corrections and
Subscription
Problems"** (5 copies
attached)

Part 1	- Federal Acquisition Regulations System
Part 2	- Definitions of Words and Terms
Part 3	- Improper Business Practices and Personal Conflicts of Interest
Part 4	- Administrative Matters
SUBCHAPTER B	- COMPETITION and ACQUISITION PLANNING
Part 5	- Publicizing Contract Actions
Part 6	- Competition Requirements
Part 7	- Acquisition Planning
Part 8	- Required Sources of Supplies and Services
Part 9	- Contractor Qualifications
Part 10	- Specifications, Standards, and Other Purchase Descriptions
Part 11	- Acquisition and Distribution of Commercial Products
Part 12	- Contract Delivery or Performance
SUBCHAPTER C	- CONTRACTING METHODS and CONTRACT TYPES
Part 13	- Small Purchase and Other Simplified Purchase Procedures
Part 14	- Sealed Bidding
Part 15	- Contracting by Negotiation
Part 16	- Types of Contracts
Part 17	- Special Contracting Methods
Part 18	- Reserved
SUBCHAPTER D	- SOCIOECONOMIC PROGRAMS
Part 19	- Small Business and Small Disadvantaged Business Concerns
Part 20	- Labor Surplus Area Concerns
Part 21	- Reserved
Part 22	- Application of Labor Laws to Government Acquisitions
Part 23	- Environment, Conservation, Occupational Safety, and Drug-Free Workplace
Part 24	- Protection of Privacy and Freedom of Information
Part 25	- Foreign Acquisition
Part 26	- Other Socioeconomic Programs
SUBCHAPTER E	- GENERAL CONTRACTING REQUIREMENTS
Part 27	- Patents, Data, and Copyrights
Part 28	- Bonds and Insurance
Part 29	- Taxes

- Part 36 - Construction and Architect-Engineer Contracts
- Part 37 - Service Contracting
- Part 38 - Federal Supply Schedule Contracting
- Part 39 - Acquisition of Information Resources
- Parts 40 and 41 - Reserved

SUBCHAPTER G - CONTRACT MANAGEMENT

- Part 42 - Contract Administration
- Part 43 - Contract Modifications
- Part 44 - Subcontracting Policies and Procedures
- Part 45 - Government Property
- Part 46 - Quality Assurance
- Part 47 - Transportation
- Part 48 - Value Engineering
- Part 49 - Termination of Contracts
- Part 50 - Extraordinary Contractual Actions
- Part 51 - Use of Government Sources by Contractors

SUBCHAPTER H - CLAUSE and FORMS

- Part 52 - Solicitation Provisions and Contract Clauses
- Part 53 - Forms

APPENDICES to THE FAR

- Appendix A - Acquisition of Federal Information Processing (FIP) Resources by Contracting

is a violation of statute, unless permitted by one of the exceptions in 6.302.

(b) Each contract awarded without providing for full and open competition shall contain a reference to the specific authority under which it was so awarded. Contracting officers shall use the U.S. Code citation applicable to their agency (see 6.302).

(c) Contracting without providing for full and open competition shall not be justified on the basis of (1) a lack of advance planning by the requiring activity or (2) concerns related to the amount of funds available (e.g., funds will expire) to the agency or activity for the acquisition of supplies or services.

(d) When not providing for full and open competition, the contracting officer shall solicit offers from as many potential sources as is practicable under the circumstances.

(e) For contracts under this subpart, the contracting officer shall use the contracting procedures prescribed in 6.102(a) or (b), if appropriate, or any other procedures authorized by this regulation.

6.302 Circumstances permitting other than full and open competition.

The following statutory authorities (including applications and limitations) permit contracting without providing for full and open competition. Requirements for justifications to support the use of these authorities are in 6.303.

6.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a) Authority.

(1) Citations: 10 U.S.C. 2304(c)(1) or 41 U.S.C. 253(c)(1).

(2) When the supplies or services required by the agency are available from only one responsible source, or, for DOD, NASA, and the Coast Guard, from only one or a limited number of responsible sources, and no other type of supplies or services will satisfy agency requirements, full and open competition need not be provided for.

(i) Supplies or services may be considered to be available from only one source if the source has submitted an unsolicited research proposal that (A) demonstrates a unique and innovative concept, or, demonstrates a unique capability of the source to provide the particular research services proposed; (B) offers a concept or services not otherwise available to the Government; and, (C) does not resemble the substance of a pending competitive acquisition. (See 10 U.S.C. 2304(d)(1)(A) and 41 U.S.C. 253(d)(1)(A).)

(ii) Supplies may be deemed to be available only

U.S.C. 253 (d)(1)(B).)

(iii) For DOD, NASA, and the Coast Guard, services may be deemed to be available only from the original source in the case of follow-on contracts for the continued provision of highly specialized services when it is likely that award to any other source would result in (A) substantial duplication of cost to the Government that is not expected to be recovered through competition, or (B) unacceptable delays in fulfilling the agency's requirements. (See 10 U.S.C. 2304(d)(1)(B).)

(b) *Application.* This authority shall be used, if appropriate, in preference to the authority in 6.302-7; it shall not be used when any of the other circumstances is applicable. Use of this authority may be appropriate in situations such as the following (these examples are not intended to be all inclusive and do not constitute authority in and of themselves):

(1) When there is a reasonable basis to conclude that the agency's minimum needs can only be satisfied by (i) unique supplies or services available from only one source or only one supplier with unique capabilities; or, (ii) for DOD, NASA, and the Coast Guard, unique supplies or services available from only one or a limited number of sources or from only one or a limited number of suppliers with unique capabilities.

(2) The existence of limited rights in data, patent rights, copyrights, or secret processes; the control of basic raw material; or similar circumstances, make the supplies and services available from only one source (however, the mere existence of such rights or circumstances does not in and of itself justify the use of these authorities) (see Part 27).

(3) When acquiring electric power or energy, gas (natural or manufactured), water, or other utility services, circumstances may dictate that only one supplier can furnish the service (see 8.304-5(d)); or when the contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system.

(4) When the agency head has determined in accordance with the agency's standardization program that only specified makes and models of technical equipment and parts will satisfy the agency's needs for additional units or replacement items, and only one source is available.

(c) *Application for brand name descriptions.* An acquisition that uses a brand name description or other purchase description to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer does not provide for full and open competition regardless of the

full and open competition and do not require justifications and approvals to support their use.)

(d) *Limitations.* (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

(2) For contracts awarded using this authority, the notices required by 5.201 shall have been published and any bids and proposals must have been considered. (See 15.402(h).)

6.302-2 Unusual and compelling urgency.

(a) *Authority.*

(1) Citations: 10 U.S.C. 2304(c)(2) or 41 U.S.C. 253(c)(2).

(2) When the agency's need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals, full and open competition need not be provided for.

(b) *Application.* This authority applies in those situations where (1) an unusual and compelling urgency precludes full and open competition, and (2) delay in award of a contract would result in serious injury, financial or other, to the Government.

(c) *Limitations.* (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304. These justifications may be made and approved after contract award when preparation and approval prior to award would unreasonably delay the acquisition.

(2) This statutory authority requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.

6.302-3 Industrial mobilization; or engineering, developmental, or research capability.

(a) *Authority.*

(1) Citations: 10 U.S.C. 2304(c)(3) or 41 U.S.C. 253(c)(3).

(2) Full and open competition need not be provided for when it is necessary to award the contract to a particular source or sources in order (i) to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization, or (ii) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

(b) *Application.* (1) Use of the authority in paragraph

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active engineering, research, or development work;

(iii) Maintain properly balanced sources of supply for meeting the requirements of acquisition programs in the interest of industrial mobilization (when the quantity required is substantially larger than the quantity that must be awarded in order to meet the objectives of this authority, that portion not required to meet such objectives will be acquired by providing for full and open competition, as appropriate, under this part);

(iv) Limit competition for current acquisition of selected supplies or services approved for production planning under the Department of Defense Industrial Preparedness Program to planned producers with whom industrial preparedness agreements for those items exist, or limit award to offerors who agree to enter into industrial preparedness agreements;

(v) Create or maintain the required domestic capability for production of critical supplies by limiting competition to items manufactured in the United States or the United States and Canada;

(vi) Continue in production, contractors that are manufacturing critical items, when there would otherwise be a break in production;

(vii) Divide current production requirements among two or more contractors to provide for an adequate industrial mobilization base; or

(viii) Acquire items covered by Subpart 8.2, Jewel Bearings and Related Items.

(2) Use of the authority in paragraph (a)(2)(ii) of this subsection may be appropriate when it is necessary to—

(i) Establish or maintain an essential capability for theoretical analyses, exploratory studies, or experiments in any field of science or technology;

(ii) Establish or maintain an essential capability for engineering or developmental work calling for the practical application of investigative findings and theories of a scientific or technical nature; or

(iii) Contract for supplies or services as are necessary incident to paragraphs (b)(2)(i) or (ii) of this subsection.

(c) *Limitations.* Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

6.302-4 International agreement.

(a) *Authority.*

(1) Citations: 10 U.S.C. 2304(c)(4) or 41 U.S.C. 253(c)(4).

The evaluation procedure to be followed after the contracting officer receives the cost estimate for Government performance (see 7.304(b)) and the responses to the solicitation differs from conventional contracting procedures as follows:

(a) *Sealed bidding.* (1) At the public bid opening, after recording of bids, the contracting officer shall—

(i) Open the sealed envelope containing the cost-comparison form on which the cost estimate for Government performance has been entered;

(ii) Enter on the cost-comparison form the price of the apparent low bidder;

(iii) Announce the result, based on the initial cost-comparison form, stating that this result is subject to required agency processing, including evaluation for responsiveness and responsibility, completion and audit of the cost-comparison form (see Supplement, Part IV, Illustration 1), and resolution of any requests for review under the appeals procedure (see 7.307);

(iv) State that no final determination for performance by the Government or under contract will be made during the public review period specified in the solicitation (at least 15 working days, up to a maximum of 30 working days if the contracting officer considers the action to be complex; the public review period begins when the documents identified in (v) below are available to interested parties), plus any additional time required for the appeals procedure; and

(v) Make available for this public review by interested parties the abstract of bids, completed cost-comparison form, and detailed data supporting the cost estimate for Government performance.

(2) After evaluation of bids (see Subpart 14.4) and determinations of responsibility, the contracting officer shall provide the price of the low responsive, responsible bidder to the preparer of the cost estimate for Government performance, for final Government review of the cost-comparison form.

(3) Upon completion of the review process, including resolution of any request under 7.307, the responsible agency official shall make the final determination for performance by the Government or under contract and provide written notification to the contracting officer, who shall either award a contract or cancel the solicitation as required.

ment, open the sealed estimate in the presence of the preparer, enter the amount of the most advantageous proposal on the cost-comparison form, and return the form to the preparer of the cost estimate for Government performance for completion. The preparer shall give due consideration to all types of costs which could add or subtract from the cost of either mode of performance.

(1) If the result of the cost comparison favors performance under contract and the responsible agency official approves the result, the contracting officer shall award a contract in accordance with agency procedures. Concurrently with the award, the contracting officer shall publicly—

(i) Notify interested parties of the result of the cost comparison;

(ii) Inform interested parties that the completed cost-comparison form and detailed supporting data are available for review;

(iii) Announce the contractor's name; and

(iv) Advise interested parties that contractor preparations for performance are conditioned upon completion of the public review period specified in the solicitation plus any additional period required by the appeals procedure.

(2) If the result of the cost comparison favors Government performance, the contracting officer shall—

(i) Notify interested parties of the result of the cost comparison;

(ii) Inform interested parties that the completed cost-comparison form and detailed supporting data relative to the Government cost estimate are available for public review (see paragraph (b)(3) of this section); and

(iii) Announce the price of the offer most advantageous to the Government.

(3) The public review period shall begin with the contracting officer's announcement of the cost-comparison result and availability of the cost comparison forms and detailed supporting data to interested parties. The review period shall last for the period specified in the solicitation (at least 15 working days, up to a maximum of 30 working days if the contracting officer considers the action to be complex). Upon completion of the public review period and resolution of any questions raised under 7.307, the

(a) The Circular provides that each agency shall establish an appeals procedure for informal administrative review of the initial cost-comparison result. The appeals procedure shall provide for an independent, objective review of the initial result by an official at the same level as, or at a higher level than, the official who approved that result. This review must be completed within 30 days after the deciding official receives a request under paragraph (b) of this section. The purpose is to protect the rights of affected parties and to ensure that final agency determinations are fair, equitable, and in accordance with established policy.

(b) The Circular provides that the appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and shall not apply to questions concerning selection of one contractor in preference to another, which shall be treated as prescribed in 14.407-8, Protests against award. Directly affected parties may request review of any discrepancy in the cost comparison. Any such requests shall be made in writing to the contracting officer, who shall forward them in accordance with agency procedures. Such requests shall be considered only if based on specific objections and received within the public review period stated in the solicitation.

SUBPART 7.4—EQUIPMENT LEASE OR PURCHASE

7.400 Scope of subpart.

This subpart provides guidance pertaining to the decision to acquire equipment by lease or purchase. It applies to both the initial acquisition of equipment and the renewal or extension of existing equipment leases.

7.401 Acquisition considerations.

(a) Agencies should consider whether to lease or purchase equipment based on a case-by-case evaluation of comparative costs and other factors. The following factors are the minimum that should be considered:

- (1) Estimated length of the period the equipment is to be used and the extent of use within that period.
- (2) Financial and operating advantages of alternative types and makes of equipment.
- (3) Cumulative rental payments for the estimated

- (1) Availability of purchase options.
- (2) Potential for use of the equipment by other agencies after its use by the acquiring agency is ended.
- (3) Trade-in or salvage value.
- (4) Imputed interest.
- (5) Availability of a servicing capability, especially for highly complex equipment; e.g., can the equipment be serviced by the Government or other sources if it is purchased?

7.402 Acquisition methods.

(a) *Purchase method.* (1) Generally, the purchase method is appropriate if the equipment will be used beyond the point in time when cumulative leasing costs exceed the purchase costs.

(2) Agencies should not rule out the purchase method of equipment acquisition in favor of leasing merely because of the possibility that future technological advances might make the selected equipment less desirable.

(b) *Lease method.* (1) The lease method is appropriate if it is to the Government's advantage under the circumstances. The lease method may also serve as an interim measure when the circumstances—

(i) Require immediate use of equipment to meet program or system goals; but

(ii) Do not currently support acquisition by purchase.

(2) If a lease is justified, a lease with option to purchase is preferable.

(3) Generally, a long term lease should be avoided, but may be appropriate if an option to purchase or other favorable terms are included.

7.403 General Services Administration assistance.

(a) When requested by an agency, the General Services Administration (GSA) will assist in lease or purchase decisions by providing information such as—

- (1) Pending price adjustments to Federal Supply Schedule contracts;
- (2) Recent or imminent technological developments;
- (3) New techniques; and
- (4) Industry or market trends.

(b) Agencies may request information from the follow-

terms of economy, efficiency, of service and is based upon the class, conditions, and characteristics of services being rendered to the agency.

(4) The proposed facilities charge, if any, is (i) necessary to secure the required service, (ii) based on current cost or pricing data, and (iii) reasonable in total amount, and may be certified for payment by the agency.

(5) The proposed acquisition meets the requirements of this subpart.

8.307-2 Precontract review by GSA.

(a) Each agency shall refer applicable proposed acquisitions of utility services to GSA for review unless an agency has its own program of prior review under 8.307-3.

(b) GSA shall acknowledge the date of receipt of the referral from the agency.

(c) If GSA does not provide comments to the referring agency within 20 workdays after a proposed utility services acquisition is received for review (or within a lesser period if agreed upon), the referring agency may complete negotiations and execute the contract.

(d) Proposed acquisitions forwarded for GSA prior review shall contain the technical and acquisition data required by 8.307-1(c) and 8.307-4.

8.307-3 Precontract review by acquiring agency.

(a) Agencies having authorization from GSA by direct delegation of authority may conduct their own programs of utility acquisition reviews in accordance with this subpart.

(b) Agencies that do not have the authorization indicated in paragraph (a) of this section, but that have the qualified technical personnel to conduct an agency review program, may seek a direct delegation of authority to conduct such a program from the Office of Public Utilities, at the address stated in 8.303(a).

(c) Agency authority to conduct prior reviews shall not preclude the referral of any specific case to GSA for assistance, if desired by the agency.

(d) Any agency having responsibility for review shall provide by agency procedure for uniform application of the guidelines in 8.307-4.

8.307-4 Guidelines and data for precontract review.

(a) The office proposing to acquire utility services shall assemble and furnish complete information relating to

(c) If not included in the foregoing, a copy of the following additional documents and data shall be furnished, if applicable:

(1) A complete copy or copies of the published or unpublished current rate schedules and tariffs of the utility supplier.

(2) The following data concerning quantity, quality, and delivery schedule of required services when new or initial services are to commence:

(i) The date initial service is required.

(ii) Data, for the first calendar year of full service, on estimated maximum demand, monthly consumption, and estimated annual cost of the service and connection charges to be paid by the agency.

(iii) Known or estimated time schedule for growth to ultimate requirements.

(iv) Estimated ultimate maximum demand and ultimate monthly consumption.

(v) A simple schematic diagram or line drawing showing the meter locations and the location of the new utility facilities to be constructed by the Government and the new connecting facilities to be constructed by the utility supplier to provide the new services.

(vi) Accounting and appropriation data to cover the required utility services and any connection charges required to be paid by the agency to receive such utility services.

(3) Identification of all available sources or methods of supply, the cost effectiveness of each, and a statement of the ability of each source to provide the required services, including the location and a description of each available supplier's facilities at the nearest point of service.

(4) Identification of any unusual factors affecting the acquisition.

(5) The following data concerning proposed facilities and related charges or costs:

(i) Proposed refundable or nonrefundable connection charge, termination liability, or other facilities charge to be paid by the Government, together with a description of the supplier's proposed facilities and estimated construction costs entering into the determination of the proposed connection charge, termination liability, or facilities charge.

(ii) The basis for the connection charge including
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make its own connection to the supplier's facilities, in lieu of paying the connection charge proposed by the utility supplier. In the case of proposed water and sewage contracts, the acquiring agency shall provide its estimates to construct and operate its own utility facilities in lieu of participating in a cost-sharing construction program with the proposed utility supplier.

(d) For existing utility services, the agency shall furnish the data required above under 8.307-4(a), (b), (c)(1) and the following additional information:

(1) A copy of the monthly bills covering the most recent 12 months.

(2) A tabulation, by months, for the most recent 12 months, showing the utility demands, consumption and charges, fuel adjustment charges and the average monthly cost per unit of consumption.

(3) A tabulation by months, for the next 12 months showing the same data as requested in paragraph (d)(2) above.

(4) Accounting and appropriation data to cover the costs for the continuation of utility services.

(5) A simple schematic diagram or line drawing suitable to be included in the utility services contract showing the meter locations.

(6) For electric service contracts, state if the transformer at the point of delivery is owned by the Government or the utility supplier and if the metering is made on the primary or secondary side of such transformer.

8.308 Capital credits.

Capital credits are a form of cash reimbursement or offset of billings by Reconstruction Electrification Administration-financed Cooperatives to their customers. See 41 CFR 101-33.3 for procedures on processing these capital credits.

8.309 Contract clauses.

(a) The contracting officer shall insert the clause at 52.208-3, Conflicts, in solicitations and contracts for utility services.

(b) The contracting officer shall also insert in solicitations and contracts for utility services the provisions and clauses prescribed elsewhere in the FAR, as appropriate for

managed by the General Services Administration (GSA), provides Federal agencies with a simplified process for obtaining commonly used supplies and services at prices associated with volume buying. Indefinite delivery contracts (including requirements contracts) are established with commercial firms to provide supplies and services at stated prices for given periods of time. The schedule contracting office issues publications, titled Federal Supply Schedules, containing the information necessary for placing delivery orders with the contractors. Ordering offices issue delivery orders directly to the schedule contractors for the required supplies or services. Similar systems of schedule-type contracting are used for automatic data processing equipment and services, for telecommunications equipment and services and for military items managed by the Department of Defense. These systems are not included in the Federal Supply Schedule program covered by this subpart.

(b) Ordering offices may request copies of schedules by completing GSA Form 457, FSS Publications Mailing List Application, and mailing it to the GSA Centralized Mailing List Service (7CAFL), P.O. Box 6477, Fort Worth, Texas 76115. Copies of GSA Form 457 and the GSA publication titled "Federal Supply Schedule Program Guide" may also be obtained from the above address. The Guide, a supplement to the GSA publication titled "GSA Supply Catalog," includes a listing of Federal Supply Schedules and information on the use of schedules.

8.402 Applicability.

(a) This subpart applies to—

(1) Federal agencies ordering supplies or services from Federal Supply Schedules on either a mandatory or optional (nonmandatory) basis (see 8.404);

(2) Civilian and military commissaries and nonappropriated fund activities authorized by a Federal agency to use Federal Supply Schedules for their own use, not for resale; and

(3) Contractors authorized under Part 51 to order from schedules.

(b) This subpart does not apply to agencies placing orders for automatic data processing and telecommunications items or services from schedules. See Part 39 for policies and procedures for placing orders for those items or services.

CONTRACTOR QUALIFICATIONS

9.000 Scope of part.

This part prescribes policies, standards, and procedures pertaining to prospective contractors' responsibility; debarment, suspension, and ineligibility; qualified products; first article testing and approval; contractor team arrangements; defense production pools and research and development pools; and organizational conflicts of interest.

SUBPART 9.1—RESPONSIBLE PROSPECTIVE CONTRACTORS

9.100 Scope of subpart.

This subpart prescribes policies, standards, and procedures for determining whether prospective contractors and subcontractors are responsible.

9.101 Definitions.

"Preaward survey" means an evaluation by a surveying activity of a prospective contractor's capability to perform a proposed contract.

"Responsible prospective contractor" means a contractor that meets the standards in 9.104.

"Surveying activity" means the cognizant contract administration office or, if there is no such office, another organization designated by the agency to conduct preaward surveys.

9.102 Applicability.

(a) This subpart applies to all proposed contracts with any prospective contractor that is located—

(1) In the United States, its possessions, or Puerto Rico; or

(2) Elsewhere, unless application of the subpart would be inconsistent with the laws or customs where the contractor is located.

(b) This subpart does not apply to proposed contracts with (1) foreign, State, or local governments; (2) other U.S. Government agencies or their instrumentalities; or (3) agencies for the blind or other severely handicapped (see Subpart 8.7).

9.103 Policy.

(a) Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only.

contracting officer makes an affirmative determination of responsibility. In the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility. If the prospective contractor is a small business concern, the contracting officer shall comply with Subpart 19.6, Certificates of Competency and Determinations of Eligibility. (If Section 8(a) of the Small Business Act (15 U.S.C. 637) applies, see Subpart 19.8.)

(c) The award of a contract to a supplier based on lowest evaluated price alone can be false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs. While it is important that Government purchases be made at the lowest price, this does not require an award to a supplier solely because that supplier submits the lowest offer. A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors.

9.104 Standards.

9.104-1 General standards.

To be determined responsible, a prospective contractor must—

(a) Have adequate financial resources to perform the contract, or the ability to obtain them (see 9.104-3(b));

(b) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;

(c) Have a satisfactory performance record (see 9.104-3(c));

(d) Have a satisfactory record of integrity and business ethics;

(e) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors). (See 9.104-3(b).)

(f) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them (see 9.104-3(b)); and

larly desirable when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance. The special standards shall be set forth in the solicitation (and so identified) and shall apply to all offerors.

(b) Contracting officers shall award contracts for subsistence only to those prospective contractors that meet the general standards in 9.104-1 and are approved in accordance with agency sanitation standards and procedures.

9.104-3 Application of standards.

(a) *Manufacturer or regular dealer.* (See 22.608-2.)

(b) *Ability to obtain resources.* Except to the extent that a prospective contractor has sufficient resources or proposes to perform the contract by subcontracting, the contracting officer shall require acceptable evidence of the prospective contractor's ability to obtain required resources (see 9.104-1(a), (e), and (f)). Acceptable evidence normally consists of a commitment or explicit arrangement, that will be in existence at the time of contract award, to rent, purchase, or otherwise acquire the needed facilities, equipment, other resources, or personnel.

(c) *Satisfactory performance record.* A prospective contractor that is or recently has been seriously deficient in contract performance shall be presumed to be nonresponsible, unless the contracting officer determines that the circumstances were properly beyond the contractor's control, or that the contractor has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of nonresponsibility. Failure to meet the quality requirements of the contract is a significant factor to consider in determining satisfactory performance. The contracting officer shall consider the number of contracts involved and the extent of deficient performance in each contract when making this determination. If the pending contract requires a subcontracting plan pursuant to Subpart 19.7, Subcontracting with Small Business and Small Disadvantaged Business Concerns, the contracting officer shall also consider the prospective contractor's compliance with subcontracting plans under recent contracts.

(d) *Affiliated concerns.* Affiliated concerns (see "Affiliates" and "Concerns" in 19.101) are normally considered separate entities in determining whether the concern that is to perform the contract meets the applicable standards for responsibility. However, the contracting officer shall consider the affiliate's past performance and

9.104-4 Subcontractor responsibility.

(a) Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors (but see 9.405 and 9.405-2 regarding debarred, ineligible, or suspended firms). Determinations of prospective subcontractor responsibility may affect the Government's determination of the prospective prime contractor's responsibility. A prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.

(b) When it is in the Government's interest to do so, the contracting officer may directly determine a prospective subcontractor's responsibility (e.g., when the prospective contract involves medical supplies, urgent requirements, or substantial subcontracting). In this case, the same standards used to determine a prime contractor's responsibility shall be used by the Government to determine subcontractor responsibility.

9.105 Procedures.

9.105-1 Obtaining information.

(a) Before making a determination of responsibility, the contracting officer shall possess or obtain information sufficient to be satisfied that a prospective contractor currently meets the applicable standards in 9.104.

(b)(1) Generally, the contracting officer shall obtain information regarding the responsibility of prospective contractors, including requesting preaward surveys when necessary (see 9.106), promptly after a bid opening or receipt of offers. However, in negotiated contracting, especially when research and development is involved, the contracting officer may obtain this information before issuing the request for proposals. Requests for information shall ordinarily be limited to information concerning (i) the low bidder or (ii) those offerors in range for award.

(2) Preaward surveys shall be managed and conducted by the surveying activity.

(i) If the surveying activity is a contract administration office—

(A) That office shall advise the contracting officer on prospective contractors' financial competence and credit needs; and

(B) The administrative contracting officer shall obtain from the auditor any information required

facts, or (iii) in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official's decision shall be based on all the information in the administrative record, including any submission made by the contractor.

(2)(i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(ii) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(iii) The suspending official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(3) The suspending official may modify or terminate the suspension or leave it in force (for example, see 9.406-4(c) for the reasons for reducing the period or extent of debarment). However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of (i) suspension by any other agency or (ii) debarment by any agency.

(4) Prompt written notice of the suspending official's decision shall be sent to the contractor and any affiliates involved, by certified mail, return receipt requested.

9.407-4 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal proceedings, unless sooner terminated by the suspending official or as provided in this subsection.

(b) If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of the proposed termination of the suspension, at

9.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.

(a) When an offeror, in compliance with the provision at 52.209-5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, indicates an indictment, charge, civil judgment, conviction, suspension, debarment, proposed debarment, ineligibility, or default of a contract, the contracting officer shall—

(1) Request such additional information from the offeror as the contracting officer deems necessary in order to make a determination of the offeror's responsibility (but see 9.405); and

(2) Notify, prior to proceeding with award, in accordance with agency procedures (see 9.406-3(a) and 9.407-3(a)), the agency official responsible for initiating debarment or suspension action, where an offeror indicates the existence of an indictment, charge, conviction, or civil judgment.

(b) Offerors who do not furnish the certification or such information as may be requested by the contracting officer shall be given an opportunity to remedy the deficiency. Failure to furnish the certification or such information may render the offeror nonresponsible.

9.409 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.209-5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, in solicitations where the contract value is expected to exceed \$25,000.

(b) The contracting officer shall insert the clause at 52.209-6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, in solicitations and contracts where the contract value exceeds \$25,000.

SUBPART 9.5—ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST

9.500 Scope of subpart.

This subpart—

(a) Prescribes responsibilities, general rules, and procedures for identifying, evaluating, and resolving organizational conflicts of interest;

9.501 Definitions.

"Marketing consultant" means any independent contractor who furnishes advice, information, direction, or assistance to an offeror or any other contractor in support of the preparation or submission of an offer for a Government contract by that offeror. An independent contractor is not a marketing consultant when rendering—

- (a) Services excluded in Subpart 37.2;
- (b) Routine engineering and technical services (such as installation, operation, or maintenance of systems, equipment, software, components, or facilities);
- (c) Routine legal, actuarial, auditing, and accounting services; and
- (d) Training services.

"Organizational conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

9.502 Applicability.

(a) This subpart applies to contracts with either profit or nonprofit organizations, including nonprofit organizations created largely or wholly with Government funds.

(b) The applicability of this subpart is not limited to any particular kind of acquisition. However, organizational conflicts of interest are more likely to occur in contracts involving—

- (1) Management support services;
- (2) Consultant or other professional services;
- (3) Contractor performance of or assistance in technical evaluations; or
- (4) Systems engineering and technical direction work performed by a contractor that does not have overall contractual responsibility for development or production.

(c) An organizational conflict of interest may result when factors create an actual or potential conflict of interest on an instant contract, or when the nature of the work to be performed on the instant contract creates an actual or potential conflict of interest on a future acquisition. In the latter case, some restrictions on future activities of the contractor may be required.

- (d) Acquisitions subject to unique agency organizational

writing, shall set forth the extent of the conflict, and requires approval by the agency head or a designee. Agency heads shall not delegate waiver authority below the level of head of a contracting activity.

9.504 Contracting officer responsibilities.

(a) Using the general rules, procedures, and examples in this subpart, contracting officers shall analyze planned acquisitions in order to—

(1) Identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible; and

(2) Avoid, neutralize, or mitigate significant potential conflicts before contract award.

(b) Contracting officers should obtain the advice of counsel and the assistance of appropriate technical specialists in evaluating potential conflicts and in developing any necessary solicitation provisions and contract clauses (see 9.506).

(c) Before issuing a solicitation for a contract that may involve a significant potential conflict, the contracting officer shall recommend to the head of the contracting activity a course of action for resolving the conflict (see 9.506).

(d) In fulfilling their responsibilities for identifying and resolving potential conflicts, contracting officers should avoid creating unnecessary delays, burdensome information requirements, and excessive documentation. The contracting officer's judgment need be formally documented only when a substantive issue concerning potential organizational conflict of interest exists.

(e) The contracting officer shall award the contract to the apparent successful offeror unless a conflict of interest is determined to exist that cannot be avoided or mitigated. Before determining to withhold award based on conflict of interest considerations, the contracting officer shall notify the contractor, provide the reasons therefor, and allow the contractor a reasonable opportunity to respond. If the contracting officer finds that it is in the best interest of the United States to award the contract notwithstanding a conflict of interest, a request for waiver shall be submitted in accordance with 9.503. The waiver request and decision shall be included in the contract file.

9.505 General rules.

The general rules in 9.505-1 through 9.505-4 prescribe limitations on contracting as the means of avoiding, neutralizing, or mitigating organizational conflicts of interest

significant potential conflict exists and, if it does, the development of an appropriate means for resolving it. The two underlying principles are—

(a) Preventing the existence of conflicting roles that might bias a contractor's judgment; and

(b) Preventing unfair competitive advantage. In addition to the other situations described in this subpart, an unfair competitive advantage exists where a contractor competing for award of any Federal contract possesses—

(1) Proprietary information (as defined in 3.104-4(j)) that was obtained from a Government official without proper authorization; or

(2) Source selection information (as defined in 3.104-4(k)) that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract.

9.505-1 Providing systems engineering and technical direction.

(a) A contractor that provides systems engineering and technical direction for a system but does not have overall contractual responsibility for its development, its integration, assembly, and checkout, or its production shall not (1) be awarded a contract to supply the system or any of its major components or (2) be a subcontractor or consultant to a supplier of the system or any of its major components.

(b) Systems engineering includes a combination of substantially all of the following activities: determining specifications, identifying and resolving interface problems, developing test requirements, evaluating test data, and supervising design. Technical direction includes a combination of substantially all of the following activities: developing work statements, determining parameters, directing other contractors' operations, and resolving technical controversies. In performing these activities, a contractor occupies a highly influential and responsible position in determining a system's basic concepts and supervising their execution by other contractors. Therefore this contractor should not be in a position to make decisions favoring its own products or capabilities.

9.505-2 Preparing specifications or work statements.

(a)(1) If a contractor prepares and furnishes complete specifications covering nondevelopmental items, to be used in a competitive acquisition, that contractor shall not be allowed to furnish these items, either as a prime contractor

(ii) situations in which contractors, acting as industry representatives, help Government agencies prepare, refine, or coordinate specifications, regardless of source, provided this assistance is supervised and controlled by Government representatives.

(2) If a single contractor drafts complete specifications for nondevelopmental equipment, it should be eliminated for a reasonable time from competition for production based on the specifications. This should be done in order to avoid a situation in which the contractor could draft specifications favoring its own products or capabilities. In this way the Government can be assured of getting unbiased advice as to the content of the specifications and can avoid allegations of favoritism in the award of production contracts.

(3) In development work, it is normal to select firms that have done the most advanced work in the field. These firms can be expected to design and develop around their own prior knowledge. Development contractors can frequently start production earlier and more knowledgeably than firms that did not participate in the development, and this can affect the time and quality of production, both of which are important to the Government. In many instances the Government may have financed the development. Thus, while the development contractor has a competitive advantage, it is an unavoidable one that is not considered unfair; hence no prohibition should be imposed.

(b)(1) If a contractor prepares, or assists in preparing, a work statement to be used in competitively acquiring a system or services—or provides material leading directly, predictably, and without delay to such a work statement—that contractor may not supply the system, major components of the system, or the services unless—

(i) It is the sole source;

(ii) It has participated in the development and design work; or

(iii) More than one contractor has been involved in preparing the work statement.

(2) Agencies should normally prepare their own work statements. When contractor assistance is necessary, the contractor might often be in a position to favor its own products or capabilities. To overcome the possibility of bias, contractors are prohibited from supplying a system or services acquired on the basis of work statements growing out of their services, unless excepted in

tance services (see 37.201) shall not generally be awarded to a contractor that would evaluate, or advise the Government concerning, its own products or activities, or those of a competitor, without proper safeguards to ensure objectivity and protect the Government's interests. In this connection, consult OMB Circular No. A-120, Guidelines for the Use of Advisory and Assistance Services, OFPP Policy Letter 89-1, Conflict of Interest Policies Applicable to Consultants, and implementing agency regulations.

9.505-4 Obtaining access to proprietary information.

(a) When a contractor requires proprietary information from others to perform a Government contract and can use the leverage of the contract to obtain it, the contractor may gain an unfair competitive advantage unless restrictions are imposed. These restrictions protect the information and encourage companies to provide it when necessary for contract performance. They are not intended to protect information (1) furnished voluntarily without limitations on its use or (2) available to the Government or contractor from other sources without restriction.

(b) A contractor that gains access to proprietary information of other companies in performing advisory and assistance services for the Government must agree with the other companies to protect their information from unauthorized use or disclosure for as long as it remains proprietary and refrain from using the information for any purpose other than that for which it was furnished. The contracting officer shall obtain copies of these agreements and ensure that they are properly executed.

(c) Contractors also obtain proprietary and source selection information by acquiring the services of marketing consultants which, if used in connection with an acquisition, may give the contractor an unfair competitive advantage. Contractors should make inquiries of marketing consultants to ensure that the marketing consultant has provided no unfair competitive advantage. See the certification required for contractors and marketing consultants in the provision at 52.209-7.

9.506 Procedures.

(a) If information concerning prospective contractors is necessary to identify and evaluate potential organizational conflicts of interest or to develop recommended actions, and no organizational conflicts of interest certificates have been filed contracting officers should first seek the infor-

(b) If the contracting officer decides that a particular acquisition involves a significant potential organizational conflict of interest, the contracting officer shall, before issuing the solicitation, submit for approval to the chief of the contracting office (unless a higher level official is designated by the agency)—

(1) A written analysis, including a recommended course of action for avoiding, neutralizing, or mitigating the conflict, based on the general rules in 9.505 or on another basis not expressly stated in that section;

(2) A draft solicitation provision (see 9.507-1); and

(3) If appropriate, a proposed contract clause (see 9.507-2).

(c) The approving official shall—

(1) Review the contracting officer's analysis and recommended course of action, including the draft provision and any proposed clause;

(2) Consider the benefits and detriments to the Government and prospective contractors; and

(3) Approve, modify, or reject the recommendations in writing.

(d) The contracting officer shall—

(1) Include the approved provision(s) and any approved clause(s) in the solicitation or the contract, or both;

(2) Consider additional information provided by prospective contractors in response to the solicitation or during negotiations;

(3) Before awarding the contract, resolve the conflict or the potential conflict in a manner consistent with the approval or other direction by the head of the contracting activity; and

(4) Retain all certificates submitted in accordance with the provisions at 52.209-7 and 52.209-8 in the contract file.

(e) If, during the effective period of any restriction (see 9.507), a contracting office transfers acquisition responsibility for the item or system involved, it shall notify the successor contracting office of the restriction, and send a copy of the contract under which the restriction was imposed.

9.507 Solicitation provisions and contract clause.

9.507-1 Solicitation provisions.

(a) As indicated in the general rules in 9.505, signifi-

(3) States the nature of the proposed restraint upon future contractor activities; and

(4) Depending on the nature of the acquisition, states whether or not the terms of any proposed clause and the application of this subpart to the contract are subject to negotiation.

(b) The contracting officer shall insert the provision at 52.209-7, Organizational Conflicts of Interest Certificate—Marketing Consultants, in solicitations, other than sealed bids, if the contract amount is expected to exceed \$200,000.

(c) The contracting officer shall insert the provision at 52.209-8, Organizational Conflicts of Interest Certificate—Advisory and Assistance Services, in solicitations for advisory and assistance services if the contract amount is expected to exceed \$25,000.

(d) The provisions required by paragraphs (b) and (c) of this subsection shall not be used in solicitations for—

(1) Services excluded in section 37.204;

(2) Routine engineering and technical services (such as installation, operation or maintenance of systems, equipment, software components, or facilities);

(3) Routine legal, actuarial, auditing and accounting services;

(4) Training services; and

(5) Services rendered in connection with intelligence activities defined in section 3.4(e) of Executive Order 12333 or a comparable definitional section in any successor order, or in connection with special access programs.

9.507-2 Contract clause.

(a) If, as a condition of award, the contractor's eligibility for future prime contract or subcontract awards will be restricted or the contractor must agree to some other restraint, the solicitation shall contain a proposed clause that specifies both the nature and duration of the proposed restraint. The contracting officer shall include the clause in the contract, first negotiating the clause's final terms with the successful offeror, if it is appropriate to do so (see 9.506(d) of this subsection).

(b) The restraint imposed by a clause shall be limited to a fixed term of reasonable duration, sufficient to avoid the circumstance of unfair competitive advantage or potential bias. This period varies. It might end, for example, when the first production contract using the contractor's specifications or work statement is awarded, or it might extend through the entire life of a system for which the contractor

national conflicts of interest may arise. They are not inclusive, but are intended to help the contracting officer apply the general rules in 9.505 to individual contract situations.

(a) Company A agrees to provide systems engineering and technical direction for the Navy on the powerplant for a group of submarines (i.e., turbines, drive shafts, propellers, etc.). Company A should not be allowed to supply any powerplant components. Company A can, however, supply components of the submarine unrelated to the powerplant (e.g., fire control, navigation, etc.). In this example, the system is the powerplant, not the submarine, and the ban on supplying components is limited to those for the system only.

(b) Company A is the systems engineering and technical direction contractor for system X. After some progress, but before completion, the system is canceled. Later, system Y is developed to achieve the same purposes as system X, but in a fundamentally different fashion. Company B is the systems engineering and technical direction contractor for system Y. Company A may supply system Y or its components.

(c) Company A develops new electronic equipment and, as a result of this development, prepares specifications. Company A may supply the equipment.

(d) XYZ Tool Company and PQR Machinery Company, representing the American Tool Institute, work under Government supervision and control to refine specifications or to clarify the requirements of a specific acquisition. These companies may supply the item.

(e) Before an ADP equipment acquisition is conducted, Company A is awarded a contract to prepare data system specifications and equipment performance criteria to be used as the basis for the equipment competition. Since the specifications are the basis for selection of commercial hardware, a potential conflict of interest exists. Company A should be excluded from the initial follow-on ADP hardware acquisition.

(f) Company A receives a contract to define the detailed performance characteristics an agency will require for purchasing rocket fuels. Company A has not developed the particular fuels. When the definition contract is awarded, it is clear to both parties that the agency will use the performance characteristics arrived at to choose competitively a contractor to develop or produce the fuels. Company A may not be awarded this follow-on contract.

(g) Company A receives a contract to prepare a detailed

available to Company A. The contract must require Company A to (1) enter into agreements with these firms to protect any proprietary information they provide and (2) refrain from using the information in supplying lasers to the Government or for any purpose other than that for which it was intended.

(i) An agency that regulates an industry wishes to develop a system for evaluating and processing license applications. Contractor X helps develop the system and process the applications. Contractor X should be prohibited from acting as a consultant to any of the applicants during its period of performance and for a reasonable period thereafter.

SUBPART 9.6—CONTRACTOR TEAM ARRANGEMENTS

9.601 Definition.

"Contractor team arrangement" means an arrangement in which—

(a) Two or more companies form a partnership or joint venture to act as a potential prime contractor; or

(b) A potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified Government contract or acquisition program.

9.602 General.

(a) Contractor team arrangements may be desirable from both a Government and industry standpoint in order to enable the companies involved to (1) complement each other's unique capabilities and (2) offer the Government the best combination of performance, cost, and delivery for the system or product being acquired.

(b) Contractor team arrangements may be particularly appropriate in complex research and development acquisitions, but may be used in other appropriate acquisitions, including production.

(c) The companies involved normally form a contractor team arrangement before submitting an offer. However, they may enter into an arrangement later in the acquisition process, including after contract award.

9.603 Policy.

The Government will recognize the integrity and validity of contractor team arrangements; *provided*, the arrangements are identified and company relationships are fully disclosed in an offer or, for arrangements entered into after

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(a) Require consent to subcontracts (see Subpart 44.2);
(b) Determine, on the basis of the stated contractor team arrangement, the responsibility of the prime contractor (see Subpart 9.1);

(c) Provide to the prime contractor data rights owned or controlled by the Government;

(d) Pursue its policies on competitive contracting, sub-contracting, and component breakout after initial production or at any other time; and

(e) Hold the prime contractor fully responsible for contract performance, regardless of any team arrangement between the prime contractor and its subcontractors.

SUBPART 9.7—DEFENSE PRODUCTION POOLS AND RESEARCH AND DEVELOPMENT POOLS

9.701 Definition.

"Pool," as used in this subpart, means a group of concerns (see 19.001) that have—

(a) Associated together in order to obtain and perform, jointly or in conjunction with each other, defense production or research and development contracts;

(b) Entered into an agreement governing their organization, relationship, and procedures; and

(c) Obtained approval of the agreement by either—

(1) The Small Business Administration (SBA) under section 9 or 11 of the Small Business Act (15 U.S.C. 638 or 640) (see 13 CFR 125); or

(2) A designated official under Part V of Executive Order 10480, August 14, 1953 (18 FR 4939, August 20, 1953) and section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158).

9.702 Contracting with pools.

(a) Except as specified in this subpart, a pool shall be treated the same as any other prospective or actual contractor.

(b) The contracting officer shall not award a contract to a pool unless the offer leading to the contract is submitted by the pool in its own name or by an individual pool member expressly stating that the offer is on behalf of the pool.

(c) Upon receipt of an offer submitted by a group representing that it is a pool, the contracting officer shall verify its approved status with the SBA District Office Director or other approving agency and document the contract file that the verification was made.

(d) Contracts with pools are exempt from the "manufacturer or regular dealer" requirement of the Walsh-Healey

the contracting officer shall require each pool member participating in the contract to furnish a certified copy of a power of attorney identifying the agent authorized to sign the offer or contract on that member's behalf. The contracting officer shall attach a copy of each power of attorney to each signed

(c) If a pool member submits an individual offer, independent of the pool, the contracting officer shall consider the pool agreement, along with other factors, in determining whether that pool member is a responsible prospective contractor under Subpart 9.1.

Commerce Business Daily) has been made evidencing the contracting agency's clear intention to set aside the acquisition for small business or small disadvantaged business.

(10) Identification of any particular 8(a) concern designated for consideration, including a brief justification, such as—

(i) The 8(a) concern, through its own efforts, marketed the requirement and caused it to be reserved for the 8(a) Program; or

(ii) The acquisition is a follow-on or renewal contract and the nominated concern is the incumbent.

(11) Bonding requirements, if applicable.

(12) Identification of all known 8(a) concerns which have expressed an interest in this specific requirement as a result of self-marketing, response to sources sought, or publication of advanced acquisition requirements.

(13) Identification of all SBA district or regional offices which have asked for the acquisition for the 8(a) Program.

(14) A recommendation, if appropriate, as to whether the acquisition should be competitive or sole source.

(15) Any other pertinent and reasonably available data.

(b) An agency offering a local buy requirement should submit it to the SBA Regional Office for the geographical area where the user is located. An agency offering a national buy requirement should submit it to the Office of Program Development, Office of Minority Small Business and Capital Ownership Development, Small Business Administration, 1441 L Street, NW, Washington, DC 20416.

19.804-3 SBA acceptance.

(a) Upon receipt of the contracting agency's offer, the SBA will determine whether to accept the requirement for the 8(a) Program. The SBA's decision whether to accept the requirement will be transmitted to the contracting agency in writing within 15 working days of receipt of the offer, unless the SBA requests, and the contracting agency grants, an extension.

(b) If the acquisition is accepted as a sole source, the SBA will advise the contracting activity of the 8(a) firm selected for negotiation. Generally, the SBA will accept a contracting activity's recommended source.

(c) If the acquisition is accepted for competition—(1)

on results of the synopsis (see 19.205-1) and other available information. The SBA will advise of any program participation stage restrictions. The SBA may limit competition to 8(a) concerns in the developmental stage of program participation; may limit competition to 8(a) concerns in the transitional stage; or may permit competition among firms in either stage.

19.804-4 Repetitive acquisitions.

In order for repetitive acquisitions to be awarded through the 8(a) Program, there must be separate offers and acceptances. This allows the SBA to revalidate a firm's eligibility, to evaluate the suitability of each acquisition as a competitive 8(a), and to determine whether the requirement should continue under the 8(a) Program.

19.805 Competitive 8(a).

19.805-1 General.

(a) Except as provided in paragraph (b) of this subsection, an acquisition offered to the SBA under the 8(a) Program shall be awarded on the basis of competition limited to eligible 8(a) firms if—

(1) There is a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers and that award can be made at a fair market price; and

(2) The anticipated award price of the contract, including options, will exceed \$5,000,000 for acquisitions assigned manufacturing standard industrial classification (SIC) codes and \$3,000,000 for all other acquisitions.

(b) Where an acquisition exceeds the competitive threshold, the SBA may accept the requirement for a sole source 8(a) award if—

(1) There is not a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers at a fair market price; or

(2) The SBA determines that an 8(a) concern owned and controlled by an economically disadvantaged Indian tribe is eligible and responsible and needs the acquisition for its business development.

(c) The SBA Associate Administrator for Minority Small Business and Capital Ownership Development (AA/MSB&COD) may approve an agency recommendation for a competitive 8(a) award below the competitive thresholds. Such recommendations will be approved only

enclosed may be included in the offering letter or may be submitted by separate correspondence through the SBA region or headquarters, depending upon whether the acquisition is a local or national buy requirement.

19.805-2 Procedures.

(a) Competitive 8(a) acquisitions shall be conducted by contracting agencies by using sealed bids (see Part 14) or competitive proposals (see Part 15).

(b) Offers shall be solicited from those sources identified in accordance with the SBA instructions provided under 19.804-3.

(c) The SBA will determine the eligibility of the firms for award of the contract. Eligibility will be determined by the SBA as of the time of submission of initial offers which include price. Eligibility is based on Section 8(a) Program criteria; e.g., whether the firm has the SIC code for the acquisition in its approved business plan, whether the firm is currently a small business under the SIC code, whether the firm is in the developmental or transitional stage (if the acquisition is restricted by stage), whether the firm is in conformance with the 8(a) support limitation set forth in its business plan, and whether the firm is in conformance with its 8(a) business activity targets.

(1) In sealed bid acquisitions, upon receipt of offers, the contracting officer will provide the SBA a copy of the solicitation, the estimated fair market price, and a list of offerors ranked in the order of their standing for award (i.e., first low, second low, etc.) with the total evaluated price for each offer, differentiating between basic requirements and any options. The SBA will consider the eligibility of the first low offeror. If the first low offeror is not determined to be eligible, the SBA will consider the eligibility of the next low offeror until an eligible offeror is identified. The SBA will determine the eligibility of the firms and advise the contracting officer within 5 working days after its receipt of the list of bidders. Once eligibility has been established by the SBA, the successful offeror will be determined by the contracting activity in accordance with normal contracting procedures.

(2) In negotiated acquisition, the SBA will determine eligibility when the successful offeror has been established by the agency and the contract transmitted for signature unless a referral has been made under 19.809, in which case the SBA will determine eligibility at that point.

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accordance with 15 CFR 124.111(c).

19.806 Pricing the 8(a) contract.

(a) The contracting officer shall price the 8(a) contract in accordance with Subpart 15.8. If required by Subpart 15.8, the SBA shall obtain certified cost or pricing data from the 8(a) contractor. If the SBA requests audit assistance to determine the reasonableness of the proposed price in a sole source acquisition, the contracting activity shall furnish it to the extent it is available.

(b) An 8(a) contract, sole source or competitive, may not be awarded if the price of the contract results in a cost to the contracting agency which exceeds a fair market price.

(c) If requested by the SBA, the contracting officer shall make available the data used to estimate the fair market price.

(d) The negotiated contract price and the estimated fair market price are subject to the concurrence of the SBA. In the event of a disagreement between the contracting officer and the SBA, the SBA may appeal in accordance with 19.810.

19.807 Estimating fair market price.

(a) The contracting officer shall estimate the fair market price of the work to be performed by the 8(a) contractor.

(b) In estimating the fair market price for an acquisition other than those covered in paragraph (c) of this section, the contracting officer shall use cost or price analysis and consider commercial prices for similar products and services, available in-house cost estimates, data (including cost or pricing data) submitted by the SBA or the 8(a) contractor, and data obtained from any other Government agency.

(c) In estimating a fair market price for a repeat purchase, the contracting officer shall consider recent award prices for the same items or work if there is comparability in quantities, conditions, terms, and performance times. The estimated price should be adjusted to reflect differences in specifications, plans, transportation costs, packaging and packing costs, and other circumstances. Price indices may be used as guides to determine the changes in labor and material costs. Comparison of commercial prices for similar items may also be used.

19.808 Contract negotiation.

19.808-1 Sole source.

(a) The SBA is responsible for initiating negotiations

contracting activity to negotiate directly with the 8(a) contractor. Whether or not direct negotiations take place, the SBA is responsible for approving the resulting contract before award and determining whether the 8(a) contractor shall be required to provide bonds. For construction contracts not exceeding \$3 million (including options), from August 15, 1988, through October 1, 1994, the SBA is authorized to exempt its contractor from Miller Act requirements for performance and payment bonds in accordance with 13 CFR 124.305. When an exemption is being favorably considered, the SBA will request and heavily weigh the written views of the contracting activity in determining whether to grant a bond exemption.

19.808-2 Competitive.

In competitive 8(a) acquisitions subject to Part 15, the contracting officer conducts negotiations directly with the competing 8(a) firms.

19.809 Preaward considerations.

The contracting officer should request a preaward survey of the 8(a) contractor whenever considered useful. If the results of the preaward survey or other information available to the contracting officer raise substantial doubt as to the firm's ability to perform, the contracting officer should refer the matter to the SBA for its consideration in deciding whether SBA should certify that it is competent and responsible to perform. This is not a referral for Certificate of Competency consideration under Subpart 19.6. Within 15 working days of the receipt of the referral or a longer period agreed to by the SBA and the contracting activity, the SBA Assistant Regional Administrator for Minority Small Business and Capital Ownership Development in the regional office which services the 8(a) firm will advise the contracting officer as to the SBA's willingness to certify its competency to perform the contract using the 8(a) concern in question as its subcontractor. The contracting officer shall proceed with the acquisition and award the contract to another appropriately selected 8(a) offeror if the SBA has not certified its competency within 15 working days (or a longer mutually agreeable period).

19.810 SBA appeals.

(a) The following matters may be submitted by the SBA Administrator for determination to the agency head if the SBA and the contracting officer fail to agree on them:

cer within 5 working days after the SBA is formally notified of the contracting officer's decision. The SBA shall provide the agency Director for Small and Disadvantaged Business Utilization a copy of this notification. The SBA must provide the request for determination to the agency head within 20 working days of the SBA's receipt of the adverse decision. Pending issuance of a decision by the agency head, the contracting officer shall suspend action on the acquisition. Action on the acquisition need not be suspended if the contracting officer makes a written determination that urgent and compelling circumstances which significantly affect the interests of the United States will not permit waiting for a decision.

(c) If the SBA appeal is denied, the decision of the agency head shall specify the reasons for the denial, including the reasons why the selected firm was determined incapable of performance, if appropriate. The decision shall be made a part of the contract file.

19.811 Preparing the contracts.

19.811-1 Sole source.

(a) The contract to be awarded by the agency to the SBA shall be prepared in accordance with agency procedures and in the same detail as would be required in a contract with a business concern. The contracting officer shall use the Standard Form 26 as the award form, except for construction contracts, in which case the Standard Form 1442 shall be used as required in 36.701(b).

(b) The agency shall prepare the contract that the SBA will award to the 8(a) contractor in accordance with agency procedures, as if the agency were awarding the contract directly to the 8(a) contractor, except for the following:

(1) The award form shall cite 41 U.S.C. 253(c)(5) or 10 U.S.C. 2304(c)(5) (as appropriate) as the authority for use of other than full and open competition.

(2) Appropriate clauses shall be included, as necessary, to reflect that the contract is between the SBA and the 8(a) contractor.

(3) The following items shall be inserted by the SBA:

- (i) The SBA contract number.
- (ii) The effective date.
- (iii) The typed name of the SBA's contracting officer.
- (iv) The signature of the SBA's contracting officer.

(5) If the contract is for construction work, it shall include requirements of the Miller Act with respect to performance and payment bonds (see Part 28), unless SBA has granted an exemption from the bonding requirement.

(c) Except in procurements where the SBA will make advance payments to its 8(a) contractor, the agency contracting officer may, as an alternative to the procedures in 19.811-1(a) and (b), use a single contract document for both the prime contract between the agency and the SBA and its 8(a) contractor. The single contract document shall contain the information in 19.811-1(b)(1), (2), (3), and (5). Appropriate blocks on the Standard Form (SF) 26 or 1442 will be asterisked and a continuation sheet appended which includes the following:

(1) Agency acquisition office, prime contract number, name of agency contracting officer and lines for signature, date signed, and effective date.

(2) The SBA office, the SBA contract number, name of the SBA contracting officer, and lines for signature and date signed.

(3) Name and lines for the 8(a) subcontractor's signature and date signed.

(d) Prior to award of contract actions in excess of \$100,000, the SBA shall provide the contracting activity with the competing contractor certifications required by 3.104-9 from its 8(a) contractor. The contracting activity's contracting officer shall maintain the list required by 3.104-9 and complete the contracting officer certification.

19.811-2 Competitive.

(a) The contract will be prepared in accordance with 14.407-1(d), except that appropriate blocks on the Standard Form 26 or 1442 will be asterisked and a continuation sheet appended which includes the following:

(1) The agency contracting activity, prime contract number, name of agency contracting officer, and lines for signature, date signed, and effective date.

(2) The SBA office, the SBA subcontract number, name of the SBA contracting officer and lines for signature and date signed.

(b) For contract actions in excess of \$100,000, the contracting activity's contracting officer shall obtain the competing contractor certifications as required by 3.104-9 directly from the 8(a) firm(s). The contracting activity's contracting officer shall maintain the list required by 3.104-9 and complete the contracting officer certification.

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Use the clause with its Alternate I if the contract is for construction and SBA has exempted it from the performance and payment bond requirements of the Miller Act.

(b) The contracting officer shall insert the clause at 52.219-12, Special 8(a) Subcontract Conditions, in contracts between the SBA and its 8(a) contractor when the acquisition is accomplished using the procedures of 19.811-1(a) and (b). Use the clause with its Alternate I if the contract is for construction and SBA has exempted it from the performance and payment bond requirements of the Miller Act.

(c) The contracting officer shall insert the clause at 52.219-17, Section 8(a) Award, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of 19.805 and in sole source awards which utilize the alternative procedure in 19.811-1(c).

(d) The contracting officer shall insert the clause at 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of 19.805.

(1) The clause at 52.219-18 with its Alternate I will be used when competition is to be limited to 8(a) concerns within one or more specific SBA districts/regions pursuant to 19.804-3.

(2) The clause at 52.219-18 with its Alternate II will be used when competition is to be limited to 8(a) concerns within a specific stage of 8(a) Program participation (i.e., developmental or transitional) pursuant to 19.804-3.

(3) The clause at 52.219-18 with its Alternate III will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with 19.502-2(b).

(e) The contracting officer shall insert the clause at 52.219-14, Limitations on Subcontracting, in any solicitation and contract resulting from this subpart.

19.812 Contract administration.

(a) The contracting officer shall assign contract administration functions, as required, based on the location of the 8(a) contractor (see DoD Directory of Contract Administration Services Components (DoD 4105.59-H)).

(b) The agency shall distribute copies of the contract(s) in accordance with Part 4. All contracts and modifications,

APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.000 Scope of part.

This part—

- (a) Deals with general policies regarding contractor labor relations as they pertain to the acquisition process;
- (b) Prescribes contracting policy and procedures for implementing pertinent labor laws; and
- (c) Prescribes contract clauses with respect to each pertinent labor law.

22.001 Definition.

"Administrator" or "Administrator, Wage and Hour Division," as used in this part, means the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 or an authorized representative.

SUBPART 22.1—BASIC LABOR POLICIES

22.101 Labor relations.

22.101-1 General.

(a) Agencies shall maintain sound relations with industry and labor to ensure (1) prompt receipt of information involving labor relations that may adversely affect the Government acquisition process and (2) that the Government obtains needed supplies and services without delay. All matters regarding labor relations shall be handled in accordance with agency procedures.

(b) Agencies shall remain impartial concerning any dispute between labor and contractor management and not undertake the conciliation, mediation, or arbitration of a labor dispute. To the extent practicable, agencies should ensure that the parties to the dispute use all available methods for resolving the dispute, including the services of the National Labor Relations Board, Federal Mediation and Conciliation Service, the National Mediation Board and other appropriate Federal, State, local, or private agencies.

(c) Agencies should, when practicable, exchange information concerning labor matters with other affected agencies to ensure a uniform Government approach concerning a particular plant or labor-management dispute.

(d) Agencies should take other actions concerning labor relations problems to the extent consistent with their acqui-

(1) Notify the agency responsible for conciliation, mediation, arbitration, or other related action of the existence of any labor dispute affecting or threatening to affect agency acquisition programs;

(2) Furnish to the parties to a dispute factual information pertinent to the dispute's potential or actual adverse impact on these programs, to the extent consistent with security regulations; and

(3) Seek a voluntary agreement between management and labor, notwithstanding the continuance of the dispute, to permit uninterrupted acquisition of supplies and services. This shall only be done, however, if the attempt to obtain voluntary agreement does not involve the agency in the merits of the dispute and only after consultation with the agency responsible for conciliation, mediation, arbitration, or other related action.

(e) The head of the contracting activity may designate programs or requirements for which it is necessary that contractors be required to notify the Government of actual or potential labor disputes that are delaying or threaten to delay the timely contract performance (see 22.103-5(a)).

22.101-2 Contract pricing and administration.

(a) Contractor labor policies and compensation practices, whether or not included in labor-management agreements, are not acceptable bases for allowing costs in cost-reimbursement contracts or for recognition of costs in pricing fixed-price contracts if they result in unreasonable costs to the Government. For a discussion of allowable costs resulting from labor-management agreements, see 31.205-6(c).

(b) Labor disputes may cause work stoppages that delay the performance of Government contracts. Contracting officers shall impress upon contractors that each contractor shall be held accountable for reasonably avoidable delays. Standard contract clauses dealing with default, excusable delays, etc., do not relieve contractors or subcontractors from the responsibility for delays that are within the contractors' or their subcontractors' control. A delay caused by a strike that the contractor or subcontractor could not reasonably prevent can be excused; however, it cannot be excused beyond the point at which a reasonably diligent contractor or subcontractor could have acted to end the strike by actions such as—

(1) Filing a charge with the National Labor Relations Board to permit the Board to seek injunctive relief in court;

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Certain costs may increase because of strikes; e.g., guard services and attorney's fees. Other costs incurred during a strike may not fluctuate (e.g., "fixed costs" such as rent and depreciation), but because of reduced production, their proportion of the unit cost of items produced increases. All costs incurred during strikes shall be carefully examined to ensure recognition of only those costs necessary for performing the contract in accordance with the Government's essential interest.

(d) If, during a labor dispute, the inspectors' safety is not endangered, the normal functions of inspection at the plant of a Government contractor shall be continued without regard to the existence of a labor dispute, strike, or picket line.

22.101-3 Reporting labor disputes.

The office administering the contract shall report, in accordance with agency procedures, any potential or actual labor disputes that may interfere with performing any contracts under its cognizance. If a contract contains the clause at 52.222-1, Notice to the Government of Labor Disputes, the contractor also must report any actual or potential dispute that may delay contract performance.

22.101-4 Removal of items from contractors' facilities affected by work stoppages.

(a) Items shall be removed from contractors' facilities affected by work stoppages in accordance with agency procedures. Agency procedures should allow for the following:

(1) Determine whether removal of items is in the Government's interest. Normally the determining factor is the critical needs of an agency program.

(2) Attempt to arrange with the contractor and the union representative involved their approval of the shipment of urgently required items.

(3) Obtain appropriate approvals from within the agency.

(4) Determine who will remove the items from the plant(s) involved.

(b) Avoid the use or appearance of force and prevent incidents that might detrimentally affect labor-management relations.

(c) When two or more agencies' requirements are or may become involved in the removal of items, the contract administration office shall ensure that the necessary coordination is accomplished.

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- (c) Maximum hours and minimum wages;
- (d) Equal employment opportunity;
- (e) Child and convict labor;
- (f) Age discrimination;
- (g) Disabled and Vietnam veteran employment; and
- (h) Employment of the handicapped.

22.102-2 Administration.

(a) Agencies shall cooperate with, and encourage contractors to use to the fullest extent practicable, the United States Employment Service (USES) and its affiliated local State Employment Service offices in meeting contractors' labor requirements. These requirements may be to staff new or expanding plant facilities, including requirements for workers in all occupations and skills from local labor market areas or through the Federal-State employment clearance system.

(b) Local State employment offices are operated throughout the United States, Puerto Rico, Guam, and the Virgin Islands. In addition to providing recruitment assistance to contractors, cooperation with the local State Employment Service offices will further the national program of maintaining continuous assessment of manpower requirements and resources on a national and local basis.

(c) The U.S. Department of Labor is responsible for the administration and enforcement of the Occupational Safety and Health Act.

22.103 Overtime.

22.103-1 Definitions.

"Normal workweek," as used in this subpart, means, generally, a workweek of 40 hours. Outside the United States, its possessions, and Puerto Rico, a workweek longer than 40 hours shall be considered normal if (a) the workweek does not exceed the norm for the area, as determined by local custom, tradition, or law; and (b) the hours worked in excess of 40 in the workweek are not compensated at a premium rate of pay.

"Overtime" means time worked by a contractor's employee in excess of the employee's normal workweek.

"Overtime premium" means the difference between the contractor's regular rate of pay to an employee for the shift involved and the higher rate paid for overtime. It does not include shift premium.

"Shift premium" means the difference between the contractor's regular rate of pay to an employee and the higher

22.103-3 Procedures.

(a) Solicitations normally shall not specify delivery or performance schedules that may require overtime at Government expense.

(b) In negotiating contracts, contracting officers should, consistent with the Government's needs, attempt to (1) ascertain the extent that offers are based on the payment of overtime and shift premiums and (2) negotiate contract prices or estimated costs without these premiums or obtain the requirement from other sources.

(c) When it becomes apparent during negotiations of applicable contracts (see 22.103-5(b)) that overtime will be required in contract performance, the contracting officer shall secure from the contractor a request for all overtime to be used during the life of the contract, to the extent that the overtime can be estimated with reasonable certainty. The contractor's request shall contain the information required by paragraph (b) of the clause at 52.222-2, Payment for Overtime Premiums.

22.103-4 Approvals.

(a) The contracting officer shall review the contractor's request for overtime. Approval of the use of overtime may be granted by an agency approving official after determining in writing that overtime is necessary to—

- (1) Meet essential delivery or performance schedules;
- (2) Make up for delays beyond the control and without the fault or negligence of the contractor; or
- (3) Eliminate foreseeable extended production bottlenecks that cannot be eliminated in any other way.

(b) Approval by the designated official of use and total dollar amount of overtime is required before inclusion of an amount in paragraph (a) of the clause at 52.222-2, Payment for Overtime Premiums. This clause is to be inserted in cost-reimbursement contracts over \$100,000, except for those exempted under 22.103-5(b).

(c) Contracting officer approval of payment of overtime premiums is required for time-and-materials and labor-hour contracts (see subparagraph (a)(3) of the clause at 52.232-7, Payments Under Time-and-Materials and Labor-Hour Contracts).

(d) No approvals are required for paying overtime premiums under other types of contracts.

(e) Approvals by the agency approving official (see 22.103-4(a)) may be for an individual contract, project, program, plant, division, or company, as practical.

approval of the agency's designated approving official and modify paragraph (a) of the clause to reflect any approval.

(g) Overtime premiums at Government expense should not be approved when the contractor is already obligated, without the right to additional compensation, to meet the required delivery date.

(h) When the use of overtime is authorized under a contract, the office administering the contract and the auditor should periodically review the use of overtime to ensure that it is allowable in accordance with the criteria in Part 31. Only overtime premiums for work in those departments, sections, etc., of the contractor's plant that have been individually evaluated and the necessity for overtime confirmed shall be considered for approval.

(i) Approvals for using overtime shall ordinarily be prospective, but, if justified by emergency circumstances, approvals may be retroactive.

22.103-5 Contract clauses.

(a) The contracting officer shall insert the clause at 52.222-1, Notice to the Government of Labor Disputes, in solicitations and contracts that involve programs or requirements that have been designated under 22.101-1(e).

(b) The contracting officer shall include the clause at 52.222-2, Payment for Overtime Premiums, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract amount is expected to be over \$100,000; unless (a) a cost-reimbursement contract for operation of vessels is contemplated, or (b) a cost-plus-incentive-fee contract that will provide a swing from the target fee of at least plus or minus 3 percent and a contractor's share of at least 10 percent is contemplated.

SUBPART 22.2—CONVICT LABOR

22.201 General.

The policies and procedures controlling the employment of prison inmates in the performance of Government contracts are based on the following:

(a) Public Law 89-176 (18 U.S.C. 4082(c)(2)), that empowers the Attorney General to authorize Federal prisoners to work at paid employment in the community during their terms of imprisonment under conditions that protect against both the exploitation of convict labor and unfair competition with free labor.

(b) Executive Order 11755, December 29, 1973, that states: "The development of the occupational and educa-

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from employing—

- (1) Persons on parole or probation;
- (2) Persons who have been pardoned or who have served their terms;
- (3) Federal prisoners authorized by the Attorney General under 18 U.S.C. 4082(c)(2) to work at paid employment in the community during the term of their imprisonment, if—

- (i) The worker is paid or is in an approved work training program on a voluntary basis;

- (ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

- (iii) Paid employment will not (A) result in the displacement of employed workers; (B) be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality; or (C) impair existing contracts for services; and

- (iv) The rates of pay and other conditions of employment will not be less than those for work of a similar nature in the locality where the work is being performed; or

- (4) Nonfederal prisoners under the conditions in 22.201(b) above if the Attorney General has certified that the work-release laws or regulations of the jurisdiction involved conform to the requirements of Executive Order 11755. The Executive order provides that, after notice and opportunity for hearing, the Attorney General shall revoke the certification if it is found that the jurisdiction's work-release program is not being conducted in conformance with the order or with its intention or purpose.

22.202 Contract clause.

The contracting officer shall insert the clause at 52.222-3, Convict Labor, in solicitations and contracts when the contract is to be performed in any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands; unless—

- (a) The contract will be subject to the Walsh-Healey Public Contracts Act (see Subpart 22.6), which contains a separate prohibition against the employment of convict labor;

- (b) The supplies or services are to be purchased from Federal Prison Industries, Inc. (see Subpart 8.6); or

- (c) The acquisition involves the purchase, from any

This subpart prescribes policies and procedures for applying the requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) (the Act) to contracts that may require or involve laborers or mechanics. In this subpart, the term "laborers or mechanics" includes apprentices, trainees, helpers, watchmen, guards, firefighters, fireguards, and workmen who perform services in connection with dredging or rock excavation in rivers or harbors, but does not include any employee employed as a seaman.

22.301 Statutory requirement.

The Act requires that certain contracts contain a clause specifying that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than 40 hours in any workweek unless paid for all such overtime hours at not less than 1 1/2 times the basic rate of pay.

22.302 Liquidated damages and overtime pay.

- (a) As set forth in the Act, when an overtime computation discloses under-payments, the contractor and any subcontractor responsible therefor shall be liable to the affected employee for the employee's unpaid wages and shall, in addition, be liable to the Government for liquidated damages. Liquidated damages shall be computed for each such affected employee in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the Act.

- (b) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Act, if the funds withheld by Federal agencies for labor standards violations are not sufficient to pay fully both the unpaid wages due laborers and mechanics and the liquidated damages due the Government, the available funds shall be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion thereof when the funds are not adequate for this purpose); and the balance, if any, shall be used for the payment of liquidated damages.

- (c) If the head of an agency or a designee finds that the administratively determined liquidated damages due under Section 104(c) of the Contract Work Hours and Safety Standards Act are incorrect, or that the contractor or sub-

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ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG- FREE WORKPLACE

23.000 Scope of part.

This part prescribes acquisition policies and procedures supporting the Government's program for ensuring a drug-free workplace and for protecting and improving the quality of the environment through pollution control, energy conservation, identification of hazardous material, and use of recovered materials.

SUBPART 23.1—POLLUTION CONTROL AND CLEAN AIR AND WATER

23.101 Applicability.

This subpart does not apply to small purchases or to the use of facilities outside the United States. ("United States," as used in this subpart, includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.)

23.102 Authorities.

- (a) Clean Air Act (42 U.S.C. 7401 et seq.).
- (b) Clean Water Act (33 U.S.C. 1251 et seq.).
- (c) Executive Order 11738, September 10, 1973 (38 FR 25161, September 12, 1973).
- (d) Environmental Protection Agency (EPA) regulations (40 CFR Part 15).

23.103 Policy.

(a) It is the Government's policy to improve environmental quality. Accordingly, executive agencies shall conduct their acquisition activities in a manner that will result in effective enforcement of the Clean Air Act (the "Air Act") and the Clean Water Act (the "Water Act").

(b) Except as provided in 23.104, executive agencies shall not enter into, renew, or extend contracts with firms proposing to use facilities listed by EPA (40 CFR Part 15) as violating facilities under the Air Act or the Water Act.

23.104 Exemptions.

(a) Except as provided in paragraphs (b) and (c) of this section, contracts and subcontracts are not subject to the restriction in 23.103(b) if they are (1) \$100,000 or under;

believes that the amount ordered in any year under the contract will not exceed \$100,000.

(b) If the facility to be used is on the EPA List of Violating Facilities for a *conviction* under the Air Act or the Water Act, the exemption in paragraph (a) above does *not* apply.

(c) The agency head may exempt any contract, subcontract, or class of contracts or subcontracts from the requirement in 23.103(b) for 1 year when it is in the paramount interest of the United States to do so.

(1) Before granting a class exemption, the agency head shall consult with the EPA Administrator or the Administrator's designee.

(2) The agency head shall notify the EPA Administrator, or a designee, as soon as practical after granting an individual exemption. The notification shall describe the purpose of the contract and explain why the paramount interest of the United States required the exemption.

23.105 Solicitation provision and contract clause.

(a) The contracting officer shall insert the solicitation provision at 52.223-1, Clean Air and Water Certification, in solicitations containing the clause at 52.223-2, Clean Air and Water (see paragraph (b) following).

(b) The contracting officer shall insert the clause at 52.223-2, Clean Air and Water, in solicitations and contracts to which this subpart applies (see 23.101), if—

(1) The contract is expected to exceed \$100,000;

(2) The contracting officer believes that orders under an indefinite quantity contract in any year will exceed \$100,000; or

(3) A facility to be used has been the subject of a conviction under the applicable portion of the Air Act (42 U.S.C. 7413(c)(1)) or Water Act (33 U.S.C. 1319(c)) and is listed by EPA as a violating facility; and

(4) The acquisition is not otherwise exempt under 23.104.

23.106 Delaying award.

(a) If an otherwise successful offeror informs the contracting officer that EPA is considering listing a facility proposed for contract performance (see the provision at 52.223-1, Clean Air and Water Certification), the contracting officer shall promptly notify the EPA Administrator or a designee, in writing, that the offeror is being considered for award.

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agency's programs or seriously disadvantage the Government. The contracting officer shall promptly notify the EPA Administrator or a designee only if a decision is made to award before the period requested expires.

23.107 Compliance responsibilities.

Primary responsibility for ensuring compliance with Federal, State, or local pollution control laws and related requirements rests with EPA and other agencies designated under the laws. If a contracting officer becomes aware of noncompliance with clean air or water standards in facilities used in performing nonexempt contracts, that contracting officer shall notify the agency head, or a designee, who shall promptly notify the EPA Administrator or a designee in writing.

SUBPART 23.2—ENERGY CONSERVATION

23.201 Authorities.

(a) Energy Policy and Conservation Act (42 U.S.C. 6361(a)(1)).

(b) Executive Order 11912, April 13, 1976 (41 FR 15825-7, April 15, 1976), as amended by Executive Order 12038, February 3, 1978 (43 FR 4957, February 7, 1978), and Executive Order 12148, July 20, 1979 (44 FR 43239, July 24, 1979).

23.202 Definitions.

"Consumer product" means any article (other than an automobile, as defined in section 501(1) of the Motor Vehicle Information and Cost Savings Act) that—

- (a) Consumes energy; and
- (b) Is distributed in commerce for personal use or consumption by individuals.

"Covered product" means a consumer product of one of the following types:

- (a) Central air conditioners.
- (b) Clothes dryers.
- (c) Clothes washers.
- (d) Dishwashers.
- (e) Freezers.
- (f) Furnaces.
- (g) Home heating equipment, not including furnaces.
- (h) Humidifiers and dehumidifiers.
- (i) Kitchen ranges and ovens.
- (j) Refrigerators and refrigerator-freezers.
- (k) Room air conditioners.

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a covered product, determined by test procedures prescribed under 42 U.S.C. 6293; and

(b) Includes any other requirements that the Secretary of Energy may prescribe under 42 U.S.C. 6295(c).

"Energy use and efficiency label" means a label provided by a manufacturer of a covered product under 42 U.S.C. 6296.

"Manufacture" means to manufacture, produce, assemble, or import.

"Manufacturer," as used in this part, means any business that, or person who, manufactures a consumer product.

23.203 Policy.

(a) Whenever the results would be meaningful, practical, and consistent with agency programs and needs, agencies shall apply energy conservation and efficiency criteria to acquisitions. In preparing solicitations and evaluating and selecting offers for award, agencies shall consider these criteria along with price and other relevant factors.

(b) When acquiring covered products, executive agencies shall consider energy use and efficiency labels and, as they become available, energy efficiency standards.

SUBPART 23.3—HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

23.300 Scope of subpart.

This subpart prescribes policies and procedures for acquiring deliverable items, other than ammunition and explosives, that require the furnishing of data involving hazardous materials. Agencies may prescribe special procedures for ammunition and explosives.

23.301 Definition.

"Hazardous material" is defined in the latest version of Federal Standard No. 313 (Federal Standards are sold to the public and Federal agencies through: General Services Administration, Specifications Unit (3FBP-W), 7th & D Sts., SW, Washington, DC 20407.

23.302 Policy.

(a) The Occupational Safety and Health Administration (OSHA) is responsible for issuing and administering regulations that require Government activities to apprise their employees of—

- (1) All hazards to which they may be exposed;
- (2) Relative symptoms and appropriate emergency

supplies being acquired are identified as hazardous materials. The latest version of Federal Standard No. 313 (Material Safety Data Sheet, Preparation and Submission of) includes criteria for identification of hazardous materials.

(c) Hazardous material data (Material Safety Data Sheets (MSDS)) are required—

(1) As specified in the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract);

(2) For any other material designated by a Government technical representative as potentially hazardous and requiring safety controls.

(d) MSDS's must be submitted—

(1) By the apparently successful offeror prior to contract award, unless the offeror certifies that the supplies are not hazardous; and

(2) For agencies other than the Department of Defense, again by the contractor with the supplies at the time of delivery.

(e) The contracting officer shall provide a copy of all MSDS's received to the safety officer or other designated individual.

23.303 Contract clause.

(a) The contracting officer shall insert the clause at 52.223-3, Hazardous Material Identification and Material Safety Data, in solicitations and contracts if the contract will require the delivery of hazardous materials as defined in 23.301.

(b) If the contract is awarded by an agency other than the Department of Defense, the contracting officer shall use the clause at 52.223-3 with its Alternate I.

SUBPART 23.4—USE OF RECOVERED MATERIALS

23.401 Authority.

(a) The statutory basis for this program is the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901, et seq.).

(b) The statute requires agencies responsible for drafting or reviewing specifications to ensure that Government specifications and standards (1) do not exclude the use of recovered materials, (2) do not require the item to be manufactured from virgin materials, and (3) require the use of recovered materials to the maximum extent possible with-

collected or recovered from solid waste.

“Solid waste” means (a) any garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility; and (b) other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities. It does not include solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Clean Water Act, (33 U.S.C. 1342, et seq.), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2011, et seq.).

23.403 Policy.

The Government's policy is to acquire items composed of the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, without adversely affecting performance requirements or exposing suppliers' employees to undue hazards from the recovered materials.

23.404 Procedures.

(a) These procedures apply to all acquisitions that require minimum percentages of recovered materials, when the price of the item exceeds \$10,000 or when the aggregate amount paid for items, or of functionally equivalent items, in the preceding fiscal year was \$10,000 or more.

(b) The contracting officer may waive requirements for using recovered materials only after determining that the items containing recovered materials—

(1) Are not available within a reasonable period of time;

(2) Fail to meet performance standards in the specifications; or

(3) Are available only at unreasonable prices.

(c) Any determination made under 23.404(b)(2) shall be made on the basis of Bureau of Standards guidelines in any case in which the material is covered by these guidelines.

23.405 Solicitation provision.

The contracting officer shall insert the provision at 52.223-4, Recovered Material Certification, in solicitations that incorporate specifications requiring the use of recovered materials.

with 8(a) contractors under FAR Subpart 19.8 and modifications which require a justification and approval (see Subpart 6.3) except—

(a) Contracts valued below \$25,000; however, the requirements of this subpart shall apply to contracts of any dollar value if the contract is awarded to an individual;

(b) Contracts or those parts of contracts that are to be performed outside of the United States, its territories, and its possessions;

(c) Contracts by law enforcement agencies, if the head of the law enforcement agency or designee involved determines that application of this subpart would be inappropriate in connection with the law enforcement agency's undercover operations; or

(d) Where application would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country.

23.502 Authority.

Drug-Free Workplace Act of 1988 (Pub. L. 100-690).

23.503 Definitions.

"Controlled substance," as used in this subpart, means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the contractor in connection with a specific contract at which employees of the contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other contract employee who has other than a minimal impact or involvement in contract performance.

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Workplace, that it will provide a drug-free workplace by—

(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establishing an ongoing drug-free awareness program to inform its employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Providing all employees engaged in performance of this contract with a copy of the statement required by subparagraph (a)(1) of this section;

(4) Notifying all employees in writing in the statement required by subparagraph (a)(1) of this section, that as a condition of employment on a covered contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction;

(5) Notifying the contracting officer in writing within 10 calendar days after receiving notice under subdivision (a)(4)(ii) of this section, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within calendar 30 days after receiving notice under subparagraph (a)(4) of this section of a conviction, taking one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

controlled substance in the performance of the contract.

(c) Failure of the offeror to provide the certification required by paragraph (a) or (b) of this section renders an offeror unqualified and ineligible for award. (See 9.104-1(g) and 19.602-1(a)(2)(i).)

(d) For a contract of 30 days or more performance duration, the contractor shall comply with the provisions of paragraph (a) of this section within 30 calendar days after contract award, unless the contracting officer agrees in writing that circumstances warrant a longer period of time to comply. Before granting such an extension, the contracting officer shall consider such factors as the number of contractor employees at the worksite, whether the contractor has or must develop a drug-free workplace program, and the number of contractor worksites. For contracts of less than 30 days performance duration, the contractor shall comply with the provisions of paragraph (a) of this section as soon as possible, but in any case, by a date prior to when performance is expected to be completed.

23.505 Solicitation provision and contract clause.

(a) Contracting officers shall insert the provision at 52.223-5, Certification Regarding A Drug-Free Workplace, except as provided in paragraph (c) of this section, in solicitations—

(1) Of any dollar value if the contract is expected to be awarded to an individual; or

(2) Expected to equal or exceed \$25,000, if the contract is expected to be awarded to other than an individual.

(b) Contracting officers shall insert the clause at 52.223-6, Drug-Free Workplace, in solicitations and contracts described in paragraph (a) of this section unless the conditions of paragraph (c) of this section apply.

(c) Contracting officers shall not insert the provision at 52.223-5, Certification Regarding A Drug-Free Workplace, or the clause at 52.223-6, Drug-Free Workplace, in solicitations and contracts, if—

(1) The resultant contract is to be performed entirely outside of the United States, its territories, and its possessions;

(2) The resultant contract is for law enforcement agencies, and the head of the law enforcement agency or designee involved determines that application of the requirements of this subpart would be inappropriate in connection with the law enforcement agency's undercover operations; or

(3) Inclusion of these requirements would be incon-

sis section exists, the contracting officer may suspend contract payments in accordance with the procedures at 32.503-6(a)(1).

(b) After determining in writing that any of the causes at paragraph (d) of this section exist, the contracting officer may terminate the contract for default.

(c) Upon initiating action under paragraph (a) or (b) of this section, the contracting officer shall refer the case to the agency suspension and debarment official, in accordance with agency procedures, pursuant to Subpart 9.4.

(d) The specific causes for suspension of contract payments, termination of a contract for default, or suspension and debarment are—

(1) The offeror has submitted a false certification in response to the provision at 52.223-5, Certification Regarding A Drug-Free Workplace;

(2) The contractor has failed to comply with its certification; or

(3) Such a number of contractor employees having been convicted of violations of criminal drug statutes occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace.

(e) A determination under this section to suspend contract payments, terminate a contract for default, or debar or suspend a contractor may be waived by the agency head for a particular contract, in accordance with agency procedures, only if such waiver is necessary to prevent a severe disruption of the agency operation to the detriment of the Federal Government or the general public (see Subpart 9.4). The waiver authority of the agency head cannot be delegated.

SUBPART 23.6—NOTICE OF RADIOACTIVE MATERIAL

23.601 Requirements.

(a) The clause at 52.223-7, Notice of Radioactive Materials, requires the contractor to notify the contracting officer prior to delivery of radioactive material.

(b) Upon receipt of the notice, the contracting officer shall notify receiving activities so that appropriate safeguards can be taken.

(c) The clause permits the contracting officer to waive the notification if the contractor certifies that a notification on prior deliveries is still accurate. The contracting officer may waive the notice only after consultation with cognizant technical representatives.

23.602 Contract clause.

The contracting officer shall insert the clause at

aircraft, ammunition, missiles, vehicles, electronic tubes,
instrument panel gauges, compasses and identification
markers.

(d)(1) The excepted articles, materials, and supplies are as follows:

- Acetylene, black.
- Agar, bulk.
- Anise.
- Antimony, as metal or oxide.
- Asbestos, amosite, chrysotile, and crocidolite.
- Bananas.
- Bauxite.
- Beef, corned, canned.
- Beef extract.
- Bephenium hydroxynapthoate.
- Bismuth.
- Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.
- Brazil nuts, unroasted.
- Cadmium, ores and flue dust.
- Calcium cyanamide.
- Capers.
- Cashew nuts.
- Castor beans and castor oil.
- Chalk, English.
- Chestnuts.
- Chicle.
- Chrome ore or chromite.
- Cinchona bark.
- Cobalt, in cathodes, rondelles, or other primary ore and metal forms.
- Cocoa beans.
- Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.
- Coffee, raw or green bean.
- Colchicine alkaloid, raw.
- Copra.
- Cork, wood or bark and waste.
- Cover glass, microscope slide.
- Cryolite, natural.
- Dammar gum.
- Diamonds, industrial, stones and abrasives.
- Emetine, bulk.
- Ergot, crude.
- Erythrityl tetranitrate.
- Fair linen, altar.
- Fibers of the following types: abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra, and sisal.

- Iodine, crude.
- Kaurigum.
- Lac.
- Leather, sheepskin, hair type.
- Lavender oil.
- Manganese.
- Menthol, natural bulk.
- Mica.
- Microprocessor chips (brought onto a Government construction site as separate units for incorporation into building systems during construction or repair and alteration of real property).
- Nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts.
- Nitroguanidine (also known as picrite).
- Nux vomica, crude.
- Oiticica oil.
- Olive oil.
- Olives (green), pitted or unpitted, or stuffed, in bulk.
- Opium, crude.
- Oranges, mandarin, canned.
- Petroleum, crude oil, unfinished oils, and finished products (see definitions of petroleum terms in subparagraph (d)(2) of this section).
- Pine needle oil.
- Platinum and related group metals, refined, as sponge, powder, ingots, or cast bars.
- Pyrethrum flowers.
- Quartz crystals.
- Quebracho.
- Quinidine.
- Quinine.
- Rabbit fur felt.
- Radium salts, source and special nuclear materials.
- Rosettes.
- Rubber, crude and latex.
- Rutile.
- Santonin, crude.
- Secretin.
- Shellac.
- Silk, raw and unmanufactured.
- Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available.
- Spices and herbs, in bulk.
- Sugars, raw.
- Swords and scabbards.
- Talc, block, steatite.

Kingston.

Vanilla beans.

Venom, cobra.

Wax, carnauba.

Woods; logs, veneer, and lumber of the following species: Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.

Yarn, 50 Denier rayon.

(2) As used in subparagraph (d)(1) of this section, petroleum terms are defined as follows:

(i) "Crude oil" means crude petroleum, as it is produced at the wellhead, and liquids (under atmospheric conditions) that have been recovered from mixtures of hydrocarbons that existed in a vaporous phase in a reservoir and that are not natural gas products.

(ii) "Finished products" means any one or more of the following petroleum oils, or a mixture or combination of these oils, to be used without further processing except blending by mechanical means:

(A) "Asphalt"—a solid or semi-solid cementitious material that (1) gradually liquefies when heated, (2) has bitumens as its predominating constituents, and (3) is obtained in refining crude oil.

(B) "Fuel oil"—a liquid or liquefiable petroleum product burned for lighting or for the generation of heat or power and derived directly or indirectly from crude oil, such as kerosene, range oil, distillate fuel oils, gas oil, diesel fuel, topped crude oil, or residues.

(C) "Gasoline"—a refined petroleum distillate that, by its composition, is suitable for use as a carburant in internal combustion engines.

(D) "Jet fuel"—a refined petroleum distillate used to fuel jet propulsion engines.

(E) "Liquefied gases"—hydrocarbon gases recovered from natural gas or produced from petroleum refining and kept under pressure to maintain a liquid state at ambient temperatures.

(F) "Lubricating oil"—a refined petroleum distillate or specially treated petroleum residue used to lessen friction between surfaces.

(G) "Naphtha"—a refined petroleum distillate falling within a distillation range overlapping the higher gasoline and the lower kerosenes.

(H) "Natural gas products"—liquids (under atmospheric conditions), including natural gasoline, that—

(i) "Residual fuel oil"—a topped crude oil or viscous residuum that, as obtained in refining or after blending with other fuel oil, meets or is the equivalent of Military Specification Mil-F-859 for Navy Special Fuel Oil and any more viscous fuel oil, such as No. 5 or Bunker C.

(iii) "Unfinished oils" means one or more of the petroleum oils listed in subdivision (ii) of this section, or a mixture or combination of these oils, that are to be further processed other than by blending by mechanical means.

25.109 Solicitation provisions and contract clause.

(a) The contracting officer shall insert the provision at 52.225-1, Buy American Certificate, in solicitations where the clause at 52.225-3 is used.

(b) When quotations are obtained orally (see Part 13), vendors shall be informed that only domestic end products, other than end products excepted on a blanket or individual basis (see 25.108 and Subpart 25.4), shall be acceptable, unless the price for an offered domestic end product is unreasonable (see 25.105).

(c) The contracting officer shall insert the provision at 52.225-2, Waiver of Buy American Act for Civil Aircraft and Related Articles, in solicitations for the acquisition of civil aircraft and related articles.

(d) The contracting officer shall insert the clause at 52.225-3, Buy American Act—Supplies, in solicitations and contracts for the acquisition of supplies, or for services involving the furnishing of supplies, for use within the United States, unless—

(1) The solicitation is restricted to domestic end products under Subpart 6.3; or

(2) The acquisition is made under the Trade Agreements Act (see Subpart 25.4); or

(3) Another exception to the Buy American Act applies (e.g., nonavailability or public interest).

SUBPART 25.2—BUY AMERICAN ACT— CONSTRUCTION MATERIALS

25.200 Scope of subpart.

This subpart implements the Buy American Act (41 U.S.C. 10) and Executive Order 10582, December 17, 1954 (as amended). It applies to contracts for the construction, alteration, or repair of any public building or public work in the United States.

(1) When the submission of certified cost or pricing data is not required (see 15.804-2 and 15.804-3), and any element of a proposal differs significantly from the Government estimate, the contracting officer should request the offeror to submit cost data concerning that element (e.g., wage rates or fringe benefits, significant materials, equipment allowances, and subcontractor costs).

(2) When a proposed price is significantly lower than the Government estimate, the contracting officer shall make sure both the offeror and the Government estimator completely understand the scope of the work. If negotiations reveal errors in the Government estimate, the estimate shall be corrected and the changes shall be documented in the contract file.

(c) When appropriate, additional pricing tools may be used. For example, proposed prices may be compared to current prices for similar types of work, adjusted for differences in the work site and the specifications. Also, rough yardsticks may be developed and used, such as cost per cubic foot for structures, cost per linear foot for utilities, and cost per cubic yard for excavation or concrete.

36.403 Cost-reimbursement contracts.

Contracting officers may use a cost-reimbursement contract to acquire construction only when its use is consistent with Subpart 16.3 and Part 15 (see 15.903(d)(1)(iii) for fee limitation on cost-reimbursement contracts).

SUBPART 36.5—CONTRACT CLAUSES

36.500 Scope of subpart.

This subpart prescribes clauses for insertion in solicitations and contracts for (a) construction and (b) dismantling, demolition, or removal of improvements contracts. Provisions and clauses prescribed elsewhere in the Federal Acquisition Regulation (FAR) shall also be used in such solicitations and contracts when the conditions specified in the prescriptions for the provisions and clauses are applicable.

36.501 Performance of work by the contractor.

(a) To assure adequate interest in and supervision of all work involved in larger projects, the contractor shall be required to perform a significant part of the contract work with its own forces. The contract shall express this requirement in terms of a percentage that reflects the minimum amount of work the contractor must perform with its own

ing the amount of work required to be performed by the contractor.

(b) The contracting officer shall insert the clause at 52.236-1, Performance of Work by the Contractor, in solicitations and contracts, except those awarded pursuant to Subparts 19.5 or 19.8, when a fixed-price construction contract is contemplated and the contract amount is expected to exceed \$1,000,000. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction contract is contemplated and the contract amount is expected to be \$1,000,000 or less.

36.502 Differing site conditions.

The contracting officer shall insert the clause at 52.236-2, Differing Site Conditions, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

36.503 Site investigation and conditions affecting the work.

The contracting officer shall insert the clause at 52.236-3, Site Investigation and Conditions Affecting the Work, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

36.504 Physical data.

The contracting officer shall insert the clause at 52.236-4, Physical Data, in solicitations and contracts when a fixed-price construction contract is contemplated and physical data (e.g., test borings, hydrographic data, weather conditions data) will be furnished or made available to offerors.

36.505 Material and workmanship.

The contracting officer shall insert the clause at 52.236-
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ments contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

36.507 Permits and responsibilities.

The contracting officer shall insert the clause at 52.236-7, Permits and Responsibilities, in solicitations and contracts when a fixed-price or cost-reimbursement construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated.

36.508 Other contracts.

The contracting officer shall insert the clause at 52.236-8, Other Contracts, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

36.509 Protection of existing vegetation, structures, equipment, utilities, and improvements.

The contracting officer shall insert the clause at 52.236-9, Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

36.510 Operations and storage areas.

The contracting officer shall insert the clause at 52.236-10, Operations and Storage Areas, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting

11, Use and Possession Prior to Completion, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract award amount is expected to exceed the small purchase limitations. This clause may be inserted in solicitations and contracts when the contract amount is expected to be within the small purchase limitations.

36.512 Cleaning up.

The contracting officer shall insert the clause at 52.236-12, Cleaning Up, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

36.513 Accident prevention.

(a) The contracting officer shall insert the clause at 52.236-13, Accident Prevention, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation. If the contract will involve work of a long duration or hazardous nature, the contracting officer shall use the clause with its Alternate I.

(b) The contracting officer shall insert the clause or the clause with its Alternate I in solicitations and contracts when a contract for services to be performed at Government facilities (see FAR Part 37) is contemplated, and technical representatives advise that special precautions are appropriate.

(c) The contracting officer should inform the Occupational Safety and Health Administration (OSHA), or other cognizant Federal, State, or local officials, of instances where the contractor has been notified to take immediate action to correct serious or imminent dangers.

36.514 Availability and use of utility services.

The contracting officer shall insert the clause at 52.236-14, Availability and Use of Utility Services, in solicitations

SERVICE CONTRACTING

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cessor, either the Government or another contractor, may continue them; and

(2) The Government anticipates difficulties during the transition from one contractor to another or to the Government. Examples of instances where use of the clause may be appropriate are services in remote locations or services requiring personnel with special security clearances.

(d) See 9.508 regarding the use of an appropriate provision and clause concerning the subject of conflict-of-interest, which may at times be significant in solicitations and contracts for services.

(e) The contracting officer shall also insert in solicitations and contracts for services the provisions and clauses prescribed elsewhere in the FAR, as appropriate for each acquisition, depending on the conditions that are applicable.

(f) The contracting officer shall insert the clause at 52.237-8, Severance Payments to Foreign Nationals Employed Under a Service Contract Performed Outside the United States, in solicitations and contracts for services which may be performed in whole or in part outside the United States.

37.111 Extension of services.

Award of contracts for recurring and continuing service requirements are often delayed due to circumstances beyond the control of contracting offices. Examples of circumstances causing such delays are bid protests and alleged mistakes in bid. In order to avoid negotiation of short extensions to existing contracts, the contracting officer may include an option clause (see 17.208(f)) in solicitations and contracts which will enable the Government to require continued performance of any services within the limits and at the rates specified in the contract. However, these rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance thereunder shall not exceed 6 months.

37.112 Government use of private sector temporaries.

Contracting officers may enter into contracts with temporary help service firms for the brief or intermittent use of the skills of private sector temporaries. Services furnished by temporary help firms shall not be regarded or treated as personal services. These services shall not be used in lieu of regular recruitment under civil service laws or to displace a Federal employee. Acquisition of these services shall comply with the authority, criteria, and conditions of 5 CFR

acquiring advisory and assistance services by contract. The subpart regulates these contracts with individuals and organizations for both personal and nonpersonal services.

37.201 Definition.

"Advisory and assistance services" means services, other than those excluded or exempted in this subpart, to support or improve agency policy development, decision-making, management, and administration, or to support or improve the operation of management systems.

37.202 Policy.

(a) The acquisition of advisory and assistance services is a legitimate way to improve Government services and operations. Accordingly, advisory and assistance services may be used at all organizational levels to help managers achieve maximum effectiveness or economy in their operations.

(b) Subject to 37.205, agencies may contract for advisory and assistance services, when essential to the agency's mission, to—

(1) Obtain outside points of view to avoid too limited judgment on critical issues;

(2) Obtain advice regarding developments in industry, university, or foundation research;

(3) Obtain the opinions, special knowledge, or skills of noted experts;

(4) Enhance the understanding of, and develop alternative solutions to, complex issues;

(5) Support and improve the operation of organizations;

(6) Ensure the more efficient or effective operation of managerial or hardware systems.

(c) Advisory and assistance services shall not be—

(1) Used in performing work of a policy, decision-making, or managerial nature which is the direct responsibility of agency officials;

(2) Used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures;

(3) Contracted for on a preferential basis to former Government employees;

(4) Used under any circumstances specifically to aid in influencing or enacting legislation;

(5) Used to obtain professional or technical advice which is readily available within the agency or another Federal agency.

37.203 Types of advisory and assistance services.

Advisory and assistance services may take the form of

quality and timeliness of policy development or decision-making.

(b) *Studies, analyses, and evaluations.* Studies, analyses, and evaluations are organized, analytic assessments needed to provide the insights necessary for understanding complex issues or improving policy development or decision-making. These analytic efforts result in formal, structured documents containing data or leading to conclusions and/or recommendations. This summary description is operationally defined by the following criteria:

(1) *Objective.* To enhance understanding of complex issues or to improve the quality and timeliness of agency policy development or decision-making by providing new insights into, understanding of, alternative solutions to, or recommendations on agency policy and program issues, through the applications of fact finding, analysis, and evaluation.

(2) *Areas of application.* All subjects, issues, or problems involving policy development or decision-making in the agency. These may involve concepts, organization, programs and other systems, and the application of such systems.

(3) *Outputs.* Outputs are formal structured documents containing or leading to conclusions and/or recommendations. Data bases, models, methodologies, and related software created in support of a study, analysis, or evaluation are to be considered part of the overall study effort.

(c) *Management and professional support services.* Management and professional support services take the form of advice, training, or direct assistance for organizations to ensure more efficient or effective operations of managerial, administrative, or related systems. This summary description is operationally defined in terms of the following criteria:

(1) *Objective.* To ensure more efficient or effective operation of management support or related systems by providing advice, training, or direct assistance associated with the design or operation of such systems.

(2) *Areas of application.* Management support or related systems such as program management, project monitoring and reporting, data collection, logistics management, budgeting, accounting, auditing, personnel management, paperwork management, records management, space management, and public relations.

(3) *Outputs.* Services in the form of information, opinions, advice, training, or direct assistance that lead to the improved design or operation of managerial, administrative, or related systems. This does not include

nical services provided prior to final Government acceptance of a complete hardware system are part of the normal development, production, and procurement processes and do not fall in this category. Engineering and technical services provided after final Government acceptance of a complete hardware system are in this category except where they are procured to increase the original design performance capabilities of existing or new systems or where they are integral to the operational support of a deployed system and have been formally reviewed and approved in the acquisition planning process.

37.204 Exclusions.

The following activities and programs are excluded or exempted from the definition of advisory or assistance services:

(a) Activities that are reviewed in accordance with the OMB Circular A-76, Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government.

(b) Architectural and engineering services as defined in Part 36.

(c) ADP/Telecommunications functions and related services that are controlled in accordance with 41 CFR Part 201, the Federal Information Resources Management Regulation.

(d) Research on theoretical mathematics and basic medical, biological, physical, social, psychological, or other phenomena.

(e) Engineering studies related to specific physical or performance characteristics of existing or proposed systems.

(f) The day-to-day operation of facilities (e.g., the Johnson Space Center and related facilities) and functions (e.g., ADP operations and building maintenance).

(g) Government-owned, contractor-operated (GOCO) facilities. However, any contract for advisory and assistance services other than the basic contract for operation and management of a GOCO shall come under the definition of advisory or assistance services.

(h) Clinical medicine.

(i) Those support services of a managerial or administrative nature performed as a simultaneous part of, and nonseparable from specific development, production, or operational support activities. In this context, nonseparable means that the managerial or administrative systems in question (e.g., subcontractor monitoring or configuration control) cannot reasonably be operated by anyone other than the designer or producer of the end-item hardware.

FEDERAL SUPPLY SCHEDULE CONTRACTING

38.000 Scope of part.

This part prescribes policies and procedures for contracting for supplies and services under the Federal Supply Schedule program, which is directed and managed by the General Services Administration. Procedures for ordering from Federal Supply Schedules are covered in Subpart 8.4. See Part 39 for automatic data processing and telecommunications equipment and services coverage. The Department of Defense uses a similar system of schedule contracting for military items that are also not a part of the Federal Supply Schedule program.

SUBPART 38.1—FEDERAL SUPPLY SCHEDULE PROGRAM

38.101 General.

(a) The Federal Supply Schedule program provides Federal agencies with a simplified process of acquiring commonly used supplies and services in varying quantities at lower prices while obtaining discounts associated with volume buying. Indefinite delivery contracts (including requirements contracts) are awarded, using competitive procedures, to commercial firms to provide supplies and services at stated prices for given periods of time. The schedule contracting office issues publications, titled Federal Supply Schedules, containing the information needed for placing delivery orders with the contractors.

(b) Each schedule identifies specific agencies in designated geographic areas that are required to use the contracts as primary sources of supply. Except as specified in 8.404-1, agencies included as mandatory users must order needed supplies and services from the schedule if the consignee is located within the geographic area of coverage. Geographic areas of coverage are determined on the basis of the location of the consignee, not the ordering office.

(c) Federal agencies not identified in the schedules as mandatory users (see 8.404-2) may issue orders under the schedules, and the contractors are encouraged to accept the orders.

(d) Under the schedule program, ordering agencies—

- (1) Issue orders directly to the contractors;
- (2) Receive shipments;
- (3) Pay the contractors; and

Schedule contracts, it may authorize other agencies to award schedule contracts and publish schedules; e.g., the Department of Veterans Affairs awards schedule contracts for certain medical and nonperishable subsistence items.

38.102 Types of Federal Supply Schedules.

38.102-1 Single-award schedules.

(a) Single-award schedules cover contracts made with one supplier at a stated price for delivery to a geographic area as defined in the schedule. A single-award schedule is appropriate if there are adequate commercial descriptions or specifications to permit competitive offers.

(b) Each single-award schedule lists the supplies or services covered and the prices. Unit prices are normally established on a zonal basis to provide for differences in transportation. The schedules contain the necessary information for placing orders. Some single-award schedules specify that contractors have prepared brochures containing additional information, usually fabric or color selections or similar variables.

38.102-2 Multiple-award schedules.

(a) Multiple-award schedules are based on negotiated contracts established with more than one supplier for delivery of comparable commercial supplies or services. All responsible firms may submit offers in response to a solicitation for multiple award schedule contracts. Contracts are awarded to firms supplying the same generic types of items or services at varying prices for delivery within the same geographic areas.

(b) These contracts are appropriate when—

(1) It is not practical to draft specifications or other descriptions for the required supplies or services and there are multiple suppliers able to furnish similar commercial supplies or services (either established catalogs or market prices, or cost or pricing data will be used as a basis for determining price reasonableness); or

(2) Selectivity is necessary for ordering offices to meet their varying needs.

(c) Prices under the multiple-award schedule program are based on discounts from commercial pricelists. Contracts are awarded after the schedules contracting officer determines that the prices, terms, and conditions offered are fair and reasonable. Orders placed by ordering offices in accordance with 8.405-1 will result in the lowest

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ply system. Potential suppliers submit applications, on GSA Form 1171, Application for Presenting New Articles, through any GSA Business Service Center (BSC). These centers are listed in the provision at 52.210-1, Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions. The BSC screens the applications and forwards them to the GSA, Federal Supply Service (FSS), for review and acceptance or rejection. This review considers such factors as possible duplication of present supply support items, anticipated demand, and health, safety, and legal requirements.

(b) The NIIS is published approximately four times a year and is cumulative. The user must obtain the contractors' catalogs and pricelists to use the schedule effectively. A contractor is required to make those documents available upon request.

(c) Agencies receiving applications from suppliers for consideration under the NIIS program shall forward them to the nearest GSA Business Service Center.

38.102-4 International Federal Supply Schedule.

(a) The International Federal Supply Schedule (IFSS) has been established to provide sources of supply (supplies and services) at reasonable prices to U.S. Government activities located overseas. The use of the schedule is mandatory only on GSA.

(b) The IFSS is divided into two sections. The items included in Section A are awarded under a solicitation using sealed bid procedures, as covered in Part 14, while the items listed in Section B are awarded under a solicitation using negotiated procedures, as described in Part 15.

SUBPART 38.2—ESTABLISHING AND ADMINISTERING FEDERAL SUPPLY SCHEDULES

38.201 Coordination requirements.

(a) Subject to current or future interagency agreements, contracting officers having responsibility for awarding Federal Supply Schedule contracts shall coordinate with the General Services Administration (GSA) before—

- (1) Establishing new schedules;
- (2) Discontinuing existing schedules;
- (3) Changing the scope of agency or geographical coverage of existing schedules; or
- (4) Adding or deleting special item numbers, national stock numbers, or revising their description.

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38.202 Criteria.

(a) To justify establishing or continuing a Federal Supply Schedule, the annual business volume expected from a single Federal Supply Schedule should be as follows: National scope multiple-award schedule - \$1,000,000; national scope single-award schedule - \$500,000; regional service schedules - \$250,000.

(b) Items included in schedules shall be such that—

(1) It is not feasible to forecast definite quantity requirements for delivery to specific consignees or no advantage accrues for doing so;

(2) Industry distribution facilities are adequate to serve the consignees; and

(3) Price advantages are sufficient to warrant the cost of maintaining the schedules.

(c) A special item number (SIN) should not be retained in a future multiple-award schedule when the anticipated purchase of the SIN will be less than \$25,000 for a 1-year period. A new contract should not be awarded to a current supplier whose sales were less than \$25,000 for the most recent 1-year period. An item (product or service) should not be retained in a future schedule when the anticipated purchases of the item will be less than \$2,000 for a 1-year period. (For the purpose of these criteria, an item is defined as a product on a multiple-award schedule; or a National Stock Number (NSN) or SIN on a single-award schedule.) This policy does not apply to service contracts or to the following:

(1) A part or accessory for a basic item.

(2) A component of a unit assembly.

(3) An item needed to fill out a range of colors, sizes, or other characteristics.

(4) A service related to an item that is being retained on a schedule.

(5) An item that is determined by the contracting officer to be economically advantageous to retain even though the expected demand is less than \$2,000 for a 1-year period. A justification must be included in the case file explaining the reasons for retaining the item.

(d) In addition, an item should be removed from a schedule when the item is—

(1) Discontinued by the manufacturer;

(2) Obsolete;

(3) Transferred to another schedule;

(4) To be provided through another method of supply;

(5) Similar to an item available from stock; or

ACQUISITION OF INFORMATION RESOURCES

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ACQUISITION OF INFORMATION RESOURCES

39.001 Policy.

In acquiring information resources, acquisition personnel shall follow the policies and procedures contained in the FAR except in those areas where the FIRMR (41 CFR Ch. 201) prescribes special policies, procedures, provisions, or clauses.

39.002 Delegations of procurement authority.

(a) The Administrator of General Services has certain

resources which may be delegated to agencies. The FIRMR contains blanket delegations and rules for requesting specific delegations. In addition, the FIRMR contains rules regarding other delegations that may be granted to meet specific information resources needs. Provisions for requesting these delegations are provided in the FIRMR (see particularly FIRMR Part 201-20).

(b) The FIRMR Part 201-39 is reprinted as Appendix A to the FAR as an aid to contracting officials operating under a delegation of procurement authority from GSA. Whenever a change is made to FIRMR Part 39, that change will be reflected in Appendix A to the FAR.

By _____ 19_____
[CORPORATE SEAL]
CERTIFICATE
I, _____, certify that I am the Secretary of XYZ CORPORATION; that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this day of _____ 19_____
By _____
[CORPORATE SEAL]

42.1205 Agreement to recognize contractor's change of name.

(a) If only a change of the contractor's name is involved and the Government's and contractor's rights and obligations remain unaffected, the parties shall execute an agreement to reflect the name change. The contractor shall forward to the responsible contracting officer three signed copies of the Change-of-Name Agreement, and one copy each of the following:

(1) The document effecting the name change, authenticated by a proper official of the State having jurisdiction.

(2) The opinion of the contractor's legal counsel stating that the change of name was properly effected under applicable law and showing the effective date.

(3) A list of all affected contracts and purchase orders remaining unsettled between the contractor and the Government, showing for each the (i) contract number and type, (ii) name and address of the contracting office, (iii) total dollar value as amended, and (iv) remaining unpaid balance.

(b) The following suggested format for an agreement may be adapted for specific cases:

CHANGE-OF-NAME AGREEMENT

The ABC CORPORATION (Contractor), a corporation duly organized and existing under the laws of _____ [insert State], and the UNITED STATES OF AMERICA (Government), enter into this Agreement as of _____ [insert date when the change of name became effective under applicable State law].

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

reference. j. The term "the contracts," as used in this Agreement, means the above contracts and purchase orders and all other contracts and purchase orders, including all modifications, made by the Government and the Contractor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Contractor has any remaining rights, duties, or obligations under these contracts and purchase orders).

(2) The XYZ CORPORATION, by an amendment to its certificate of incorporation, dated _____ 19____, has changed its corporate name to ABC CORPORATION.

(3) This amendment accomplishes a change of corporate name only and all rights and obligations of the Government and of the Contractor under the contracts are unaffected by this change.

(4) Documentary evidence of this change of corporate name has been filed with the Government.

(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT—

(1) The contracts covered by this Agreement are amended by substituting the name "ABC CORPORATION" for the name "XYZ CORPORATION" wherever it appears in the contracts; and

(2) Each party has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA,

By _____
Title _____

ABC CORPORATION,

By _____
Title _____

[CORPORATE SEAL]

CERTIFICATE
I, _____, certify that I am the Secretary of ABC CORPORATION; that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this _____ day of _____ 19____.

By _____
[CORPORATE SEAL]

ment. If the transportation data regarding f.o.b. origin contracts is insufficient for Government transportation management purposes, the CAO shall obtain the data used in the evaluation of offers.

(b) Transportation personnel assigned to or supporting the CAO, or appropriate agency personnel, are responsible for—

(1) Furnishing timely routings and releases for port shipments;

(2) Monitoring shipments to provide for carload or truckload quantities when practicable;

(3) Controlling and issuing U.S. Government bills of lading (GBL's) and determining proper freight classification descriptions;

(4) Reviewing documentation to ensure the proper distribution and validation of shipping documents;

(5) Developing, and advising on, transportation cost differentials brought on by proposed changes in contract terms; e.g., delivery schedules;

(6) Determining, for contract requirements, the size and carrying capability of carrier equipment to transport overdimensional and/or overweight supplies, hazardous materials, or supplies requiring special shipping arrangements;

(7) Developing information and reporting movements that may be the basis for negotiating special rates for volume movements or for rate adjustments (see 42.1402(b));

(8) Exercising control of irregularities in preservation, packing, loading, blocking and bracing, and other causes contributing to loss and damage; sealing of carrier equipment and documentation;

(9) Providing information on the use of transit arrangements;

(10) Recommending, when appropriate, prepayment by contractor for f.o.b. origin shipments or parcel post (see 47.303-17 and 42.1404);

(11) Recommending, when appropriate, the use of commercial forms and procedures for small shipments of a recurring nature if transportation costs do not exceed \$100, as authorized in 41 CFR 101-41.304-2 and, for the Department of Defense (DOD), in Chapter 214, Section XVII, paragraphs 214120 through 214124 of the Military Traffic Management Regulation (MTMR);

(12) Diverting, reconsigning, tracing, and expediting

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Administration (GSA) as required in 41 CFR 101-40. (See 47.105, Transportation assistance, for assistance to civilian Government activities or to military installations.)

42.1402 Volume movements within the continental United States.

(a)(1) For purposes of contract administration, a volume movement is—

(i) In DOD, the aggregate of freight shipments amounting to or exceeding 25 carloads, 25 truckloads, or 500,000 pounds, to move during the contract period from one origin point for delivery to one destination point or area; and

(ii) In civilian agencies, 50 short tons (100,000 pounds) in the aggregate to move during the contract period from one origin point for delivery to one destination point or area.

(2) Transportation personnel assigned to or supporting the CAO, or appropriate agency personnel, shall report planned and actual volume movements in accordance with agency regulations. DOD activities report to the Military Traffic Management Command (MTMC) under the Military Traffic Management Regulation (MTMR). Civilian agencies report to GSA, Office of Transportation, or other designated offices under the Federal Property Management Regulations (FPMR), specifically 41 CFR 101-40.305-2.

(b) Reporting of volume movements permits MTMC and GSA transportation personnel to determine the reasonableness of applicable current rates and, when appropriate, to negotiate adjusted or modified rates.

42.1403 Shipping documents covering f.o.b. origin shipments.

(a) Except as provided in 47.303-17, when a contract specifies delivery of supplies f.o.b. origin with transportation costs to be paid by the Government, the contractor shall make shipments on U.S. Government bills of lading (GBL's), or on other shipping documents prescribed by MTMC in the case of seavan containers, furnished by the CAO or the appropriate agency transportation office. Each agency shall establish appropriate procedures by which the contractor shall obtain GBL's. The contracting officer shall not authorize the contractor to ship on commercial bills of lading for conversion to GBL's unless delivery is extremely urgent and GBL's are not readily available.

specifically 41 CFR 101-41.304-2.

(2) For DOD shipments, corresponding guidance is in Chapter 214 of the MTMR.

42.1404 Shipments by parcel post or other classes of mail.

42.1404-1 Parcel post eligible shipments.

(a)(1) Use of parcel post or other classes of mail permits direct movements from source of supply to the user, without the intermediate documentation that is required when supplies are transported through depots or air or water terminals. However, the use of parcel post and other classes of mail shall be confined to deliveries of mailable matter that meet the size, weight, and distance limitations prescribed by the U.S. Postal Service. Parcel post eligible shipments for overseas destinations will not be sent via Small Package Delivery services or parcel post to CONUS military air or water terminals. These shipments will be mailed through the APO or FPO to the overseas user. Contractors shall not divide delivery quantities into mailable parcels for the purpose of avoiding shipments by other modes of transportation.

(2) When parcel post or other classes of mail are used by contractors, they shall prepay the postage costs by using their own mailing labels or stamps and include prepaid postage costs as separate items in the invoices for supplies shipped.

(b)(1) Use of indicia mail (in lieu of stamps or cancellations) is not authorized. However, deviations from this ban may be granted. A request for a deviation should be processed to the U.S. Postal Service following agency procedures. If a deviation is granted, the agency shall follow the U.S. Postal Service permit requirements.

(2) When indicia mail is authorized, the contractor will be provided with official mailing labels, envelopes, or cards printed "Postage and Fees Paid." These must bear in every case (i) the printed return address of the agency concerned above the printed words "Official Business" and (ii) the proper permit imprint number. The name and address of a private person or firm shall not be shown.

(c) When a contractor uses the contractor's own label for making a shipment to a post office servicing military and other agency consignees outside the United States, the contractor shall stamp or imprint the parcel immedi-

(d) Contractors may not insure shipments at Government expense for the purpose of recovery in case of loss and/or damage, except that minimum insurance required for the purposes of obtaining receipts at point of origin and upon delivery is authorized.

42.1404-2 Contract clauses.

(a) The contracting officer shall insert the clause at 52.242-10, F.o.b. Origin—Government Bills of Lading or Prepaid Postage, in solicitations and contracts when f.o.b. origin shipments are to be made using Government bills of lading or prepaid postage.

(b) The contracting officer shall insert the clause at 52.242-11, F.o.b. Origin—Government Bills of Lading or Indicia Mail, in solicitations and contracts when f.o.b. origin shipments are to be made using Government bills of lading or indicia mail, if indicia mail has been authorized by the U.S. Postal Service.

42.1405 Discrepancies incident to shipment of supplies.

(a) Discrepancies incident to shipment include overage, shortage, loss, damage, and other discrepancies between the quantity and/or condition of supplies received from commercial carriers and the quantity and/or condition of these supplies as shown on the covering bill of lading or other transportation document. Regulations and procedures for reporting and adjusting discrepancies in Government shipments are in Subpart 40.7 of the Federal Property Management Regulations (41 CFR 101-40.7). (Military installations shall consult "Reporting of Transportation Discrepancies in Shipments," AR 55-38, NAVSUP INST 4610.33C, AFR 75-18, MCO P4610.19, DLAR 4500.15.)

(b) Generally, when the place of delivery is f.o.b. origin, the Government consignee at destination is also accountable for the supplies, and all claims or reports dealing with discrepancies shall be initiated at that point in accordance with the property accountability regulations of the agency concerned.

(c) If supplies are acquired on an f.o.b. destination basis, any claim arising from a discrepancy occurring in transit is a matter for settlement between the contractor and the carrier. However, the Government consignee shall (1) notify the carrier of the discrepancy by noting the exception on the carrier's delivery receipt and (2) furnish all available

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Generally, this notification is required only for classified material; sensitive, controlled, and certain other protected material; explosives, and some other hazardous materials; selected shipments requiring movement control; or minimum

tions and contracts when advance notice of shipment is required for safety or security reasons, or where carload or truckload shipments will be made to DoD installations or, as required, to civilian agency facilities.

USE OF GOVERNMENT SOURCES BY CONTRACTORS

51.000 Scope of part.

This part prescribes policies and procedures for the use by contractors of Government supply sources and interagency fleet management system (IFMS) vehicles and related services.

SUBPART 51.1—CONTRACTOR USE OF GOVERNMENT SUPPLY SOURCES

51.100 Scope of subpart.

This subpart prescribes policies and procedures for the use of Government supply sources (see 51.102(c)) by contractors. In this subpart, the terms "contractors" and "contracts" include "subcontractors" and "subcontracts."

51.101 Policy.

(a) If it is in the Government's interest, and if supplies or services required in the performance of a Government contract are available from Government supply sources, contracting officers may authorize contractors to use these sources in performing—

- (1) Government cost-reimbursement contracts; or
- (2) Other types of negotiated contracts when the agency determines that a substantial dollar portion of the contractor's contracts are of a Government cost-reimbursement nature.

(b) Contractors with fixed-price Government contracts that require protection of security classified information may acquire security equipment through GSA sources (see 41 CFR 101-26.407).

51.102 Authorization to use Government supply sources.

(a) Before issuing an authorization to a contractor to use Government supply sources, the contracting officer shall place in the contract file a written finding supporting issuance of the authorization. The determination shall be based on, but not limited to, considerations of the following factors:

- (1) The administrative cost of placing orders with Government supply sources and the program impact of delay factors, if any.
- (2) The lower cost of items available through

(3) Suitability of items available through Government supply sources.

(4) Delivery factors such as cost and time.

(5) Recommendations of the contractor.

(b) Authorizations to subcontractors shall be issued through, and with the approval of, the contractor.

(c) Upon deciding to authorize a contractor to use Government supply sources, the contracting officer shall request, in writing, as applicable—

(1) A FEDSTRIP activity address code, through the agency's central contact point for matters involving activity address codes, from the General Services Administration (GSA), FSR, Washington, DC 20406;

(2) A MILSTRIP activity address code from the appropriate Department of Defense (DOD) service point listed in Section 1 of the Introduction to the DOD Activity Address Directory;

(3) Approval for the contractor to use Department of Veterans Affairs (VA) supply sources from the Assistant Administrator for Supply Services (Code 90), Office of Supply Services, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420;

(4) Approval for the contractor to acquire helium from the Department of the Interior, Bureau of Mines, Division of Helium Operations, Box H-4372, Herring Plaza, Amarillo, Texas 79101; or

(5) Approval from the appropriate agency for the contractor to use a Government supply source other than those identified in paragraphs (c)(1) through (c)(4) of this section.

(d) Each request made under paragraph (c) above shall contain—

(1) The complete address(es) to which the contractor's mail, freight, and billing documents are to be directed;

(2) A copy of the contracting officer's letter of authorization to the contractor;

(3) The prime contract number(s); and

(4) The effective date and duration of each contract.

(e) In each authorization to the contractor, the contracting officer—

(1) Shall cite the contract number(s) involved;

(2) Shall, when practicable, limit the period of the authorization;

(3) Shall specify, as appropriate, that—

(i) When requisitioning from GSA or DOD, the contractor shall use FEDSTRIP or MILSTRIP, as (FAC 90-8) 51-1

Federal contract number on the purchase order;

(4) May include any other limitations or conditions deemed necessary. For example, the contracting officer may—

(i) Authorize purchases from Government supply sources of any overhead supplies, but no production supplies;

(ii) Limit any authorization requirement to use Government sources to a specific dollar amount, thereby leaving the contractor free to make smaller purchases from other sources if so desired;

(iii) Restrict the authorization to certain facilities or to specific contracts; or

(iv) Provide specifically if vesting of title is to differ from other property acquired or otherwise furnished by the contractor for use under the contract; and

(5) Shall instruct the contractor to comply with the applicable policies and procedures prescribed in this subpart.

(f) After issuing the authorization, the authorizing agency shall be responsible for—

(1) Ensuring that contractors comply with the terms of their authorizations and that supplies and services obtained from Government supply sources are properly accounted for and properly used;

(2) Any indebtedness incurred for supplies or services and not satisfied by the contractor; and

(3) Submitting, in writing, to the appropriate Government sources, address changes of the contractor and deletions when contracts are completed or terminated.

51.103 Ordering from Government supply sources.

(a) Contractors placing orders under Federal Supply Schedules shall follow the terms of the applicable schedule and authorization and include with each order—

(1) A copy of the authorization (unless a copy was previously furnished to the Federal Supply Schedule contractor); and

(2) The following statement: This order is placed under written authorization from dated In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract, the latter will govern.

(b) If a Federal Supply Schedule contractor refuses to

tenance, communications equipment and supplies, and teleprocessing services shall follow the terms of the applicable contract and the procedures in 51.103(a)(1) and (2).

(d) Contractors placing orders for Government stock shall—

(1) Comply with the requirements of the contracting officer's authorization, using FEDSTRIP or MILSTRIP procedures, as appropriate;

(2) Use only the Government activity address code obtained by the contracting officer in accordance with 5.102(e) along with the contractor's assigned access code, when ordering from GSA Customer Supply Centers.

(3) Order only those items required in the performance of their contracts.

51.104 Furnishing assistance to contractors.

After receiving an activity address code, the contracting officer will notify the appropriate GSA regional office or military activity, which will contact the contractor and—

(a) Provide initial copies of ordering information and instructions; and

(b) When necessary, assist the contractor in preparing and submitting, as appropriate—

(1) The initial FEDSTRIP or MILSTRIP requisitions, the Optional Form 347, or the agency-approved forms;

(2) A completed GSA Form 457, FSS Publications Mailing List Application, so that the contractor will automatically receive current copies of required publications; or

(3) A completed GSA Form 3525, Application for Customer Supply Center Services and (Address Change).

51.105 Payment for shipments.

GSA, DOD, and VA will not forward bills to contractors for supplies ordered from Government stock until after the supplies have been shipped. Receipt of billing is sufficient evidence to establish contractor liability and to provide a basis for payment. Contracting officers should direct their contractors to make payment promptly upon receipt of billings.

51.106 Title.

(a) Title to all property acquired by the contractor under

- 52.215-36 Late Submissions, Modifications, and Withdrawals of Proposals (Overseas).
- 52.215-37 Commercial Pricing Certificate—Notice.
- 52.215-38 Preparation of Offers—Construction.
- 52.215-39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).
- 52.216-1 Type of Contract.
- 52.216-2 Economic Price Adjustment—Standard Supplies.
- 52.216-3 Economic Price Adjustment—Semistandard Supplies.
- 52.216-4 Economic Price Adjustment—Labor and Material.
- 52.216-5 Price Redetermination—Prospective.
- 52.216-6 Price Redetermination—Retroactive.
- 52.216-7 Allowable Cost and Payment.
- 52.216-8 Fixed Fee.
- 52.216-9 Fixed Fee—Construction.
- 52.216-10 Incentive Fee.
- 52.216-11 Cost Contract—No Fee.
- 52.216-12 Cost-Sharing Contract—No Fee.
- 52.216-13 Allowable Cost and Payment—Facilities.
- 52.216-14 Allowable Cost and Payment—Facilities Use.
- 52.216-15 Predetermined Indirect Cost Rates.
- 52.216-16 Incentive Price Revision—Firm Target.
- 52.216-17 Incentive Price Revision—Successive Targets.
- 52.216-18 Ordering.
- 52.216-19 Delivery-Order Limitations.
- 52.216-20 Definite Quantity.
- 52.216-21 Requirements.
- 52.216-22 Indefinite Quantity.
- 52.216-23 Execution and Commencement of Work.
- 52.216-24 Limitation of Government Liability.
- 52.216-25 Contract Definitization.
- 52.216-26 Payments of Allowable Costs Before Definitization.
- 52.217-1 Limitation of Price and Contractor Obligations.
- 52.217-2 Cancellation of Items.
- 52.217-3 Evaluation Exclusive of Options.
- 52.217-4 Evaluation of Options Exercised at Time of Contract Award.
- 52.217-5 Evaluation of Options.
- 52.217-6 Option for Increased Quantity.
- 52.217-7 Option for Increased Quantity—Separately Priced Line Item.
- 52.217-8 Option to Extend Services.
- 52.219-5 Notice of Total Small Business-Labor Surplus Area Set-Aside.
- 52.219-6 Notice of Total Small Business Set-Aside.
- 52.219-7 Notice of Partial Small Business Set-Aside.
- 52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.
- 52.219-9 Small Business and Small Disadvantaged Business Subcontracting Plan.
- 52.219-10 Incentive Subcontracting Program for Small and Small Disadvantaged Business Concerns.
- 52.219-11 Special 8(a) Contract Conditions.
- 52.219-12 Special 8(a) Subcontract Conditions.
- 52.219-13 Utilization of Women-Owned Small Businesses.
- 52.219-14 Limitations on Subcontracting.
- 52.219-15 Notice of Participation by Organizations for the Handicapped.
- 52.219-16 Liquidated Damages—Small Business Subcontracting Plan.
- 52.219-17 Section 8(a) Award.
- 52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns.
- 52.219-19 Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.
- 52.219-20 Notice of Emerging Small Business Set-Aside.
- 52.219-21 Small Business Size Representation for Targeted Industry Categories under the Small Business Competitiveness Demonstration Program.
- 52.219-22 SIC Code and Small Business Size Standard.
- 52.220-1 Preference for Labor Surplus Area Concerns.
- 52.220-2 Notice of Total Labor Surplus Area Set-Aside.
- 52.220-3 Utilization of Labor Surplus Area Concerns.
- 52.220-4 Labor Surplus Area Subcontracting Program.
- 52.221 Reserved.
- 52.222-1 Notice to the Government of Labor Disputes.
- 52.222-2 Payment for Overtime Premiums.
- 52.222-3 Convict Labor.
- 52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation.
- 52.222-5 Reserved.
- 52.222-6 Davis-Bacon Act.
- 52.222-7 Withholding of Funds.
- 52.222-8 Payrolls and Basic Records.
- 52.222-9 Apprentices and Trainees.

52.222-17 Labor Standards for Construction Work—Facilities Contracts.
52.222-18 Reserved.
52.222-19 Walsh-Healey Public Contracts Act Representation.
52.222-20 Walsh-Healey Public Contracts Act.
52.222-21 Certification of Nonsegregated Facilities.
52.222-22 Previous Contracts and Compliance Reports.
52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity.
52.222-24 Preaward On-Site Equal Opportunity Compliance Review.
52.222-25 Affirmative Action Compliance.
52.222-26 Equal Opportunity.
52.222-27 Affirmative Action Compliance Requirements for Construction.
52.222-28 Equal Opportunity Preaward Clearance of Subcontracts.
52.222-29 Notification of Visa Denial.
52.222-30 Reserved.
52.222-31—52.222-34 Reserved.
52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans.
52.222-36 Affirmative Action for Handicapped Workers.
52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.
52.222-38 Reserved.
52.222-39 Reserved.
52.222-40 Service Contract Act of 1965, as Amended—Contracts of \$2,500 or Less.
52.222-41 Service Contract Act of 1965, as Amended.
52.222-42 Statement of Equivalent Rates for Federal Hires.
52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).
52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.
52.222-45 Notice of Compensation for Professional Employees.
52.222-46 Evaluation of Compensation for Professional Employees.
52.222-47 SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA).
52.222-48 Exemption from Application of Service Contract Act Provisions for Contracts for

52.223-3 Hazardous Material Identification and Material Safety Data.
52.223-4 Recovered Material Certification.
52.223-5 Certification Regarding A Drug-Free Workplace.
52.223-6 Drug-Free Workplace.
52.223-7 Notice of Radioactive Materials.
52.224-1 Privacy Act Notification.
52.224-2 Privacy Act.
52.225-1 Buy American Certificate.
52.225-2 Waiver of Buy American Act for Civil Aircraft and Related Articles.
52.225-3 Buy American Act—Supplies.
52.225-4 Reserved.
52.225-5 Buy American Act—Construction Materials.
52.225-6 Balance of Payments Program Certificate.
52.225-7 Balance of Payments Program.
52.225-8 Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate.
52.225-9 Buy American Act—Trade Agreements Act—Balance of Payments Program.
52.225-10 Duty-Free Entry.
52.225-11 Restrictions on Certain Foreign Purchases.
52.225-12 Notice of Restrictions on Contracting with Sanctioned Persons.
52.225-13 Restrictions on Contracting with Sanctioned Persons.
52.225-14 Inconsistency Between English Version and Translation of Contract.
52.226 Reserved.
52.227-1 Authorization and Consent.
52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.
52.227-3 Patent Indemnity.
52.227-4 Patent Indemnity—Construction Contracts.
52.227-5 Waiver of Indemnity.
52.227-6 Royalty Information.
52.227-7 Patents—Notice of Government Licensee.
52.227-8 Reserved.
52.227-9 Refund of Royalties.
52.227-10 Filing of Patent Applications—Classified Subject Matter.
52.227-11 Patent Rights—Retention by the Contractor (Short Form).
52.227-12 Patent Rights—Retention by the Contractor (Long Form).

tion). The Government assumes no liability for costs incurred during the periods specified in (i) and (ii). The Contracting Officer will then either notify the Contractor in writing that it may proceed with performance of the contract or will cancel the contract at no cost to the Government.

(2) If the result of the cost comparison favors Government performance, the Contracting Officer will publicly disclose this result, the completed cost-comparison form and its detailed supporting data, and the price of the offer most advantageous to the Government. After (i) completion of a public review period of
... [insert a numeral from 15 to 30, depending upon the complexity of the matter (see 7.306(b)(3))] working days beginning with the date this information is available to interested parties and (ii) resolution of any requests for review under the agency appeals procedure (see paragraph (d) of this section), the Contracting Officer will either cancel this solicitation or award a contract, as appropriate.

(d) The Government will not make a final determination either for contract or Government performance during the public review period. During this period, directly affected parties may file with the Contracting Officer written requests, based on specific objections, for administrative review of the cost-comparison result under the agency appeals procedure. This review will be completed within 30 days after the Contracting Officer receives the requests. The appeals procedure shall be used only to resolve ques-

tion that displaces an otherwise low cost estimate for Government performance shall not be considered.

(End of provision)

52.207-3 Right of First Refusal of Employment.

As prescribed in 7.305(c), insert the following clause:

RIGHT OF FIRST REFUSAL OF EMPLOYMENT

(NOV 1991)

(a) The Contractor shall give Government employees who have been or will be adversely affected or separated as a result of award of this contract the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment conflict of interest standards.

(b) Within 10 days after contract award, the Contracting Officer will provide to the Contractor a list of all Government employees who have been or will be adversely affected or separated as a result of award of this contract.

(c) The Contractor shall report to the Contracting Officer the names of individuals identified on the list who are hired within 90 days after contract performance begins. This report shall be forwarded within 120 days after contract performance begins.

(End of clause)

52.207-4 Economic Purchase Quantity—Supplies.

As prescribed in 7.203, insert the following provision:

(The next page is 52-17.)

conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons for the disapproval.

(c) If the first article is disapproved, the Contractor, upon Government request, shall submit an additional first article for testing. After each request, the Contractor shall make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the Contractor, including any and all costs for additional tests following a disapproval. The Contractor shall furnish any additional first article to the Government under the terms and conditions and within the time specified by the Government. The Government shall act on this first article within the time limit specified in paragraph (b) above. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule or for any additional costs to the Government related to these tests.

(d) If the Contractor fails to deliver any first article on time, or the Contracting Officer disapproves any first article, the Contractor shall be deemed to have failed to make delivery within the meaning of the Default clause of this contract.

(e) Unless otherwise provided in the contract, the Contractor—

(1) May deliver the approved first article as a part of the contract quantity, provided it meets all contract requirements for acceptance and was not consumed or destroyed in testing; and

(2) Shall remove and dispose of any first article from the Government test facility at the Contractor's expense.

(f) If the Government does not act within the time specified in paragraph (b) or (c) above, the Contracting Officer shall, upon timely written request from the Contractor, equitably adjust under the Changes clause of this contract the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.

(g) The Contractor is responsible for providing operating and maintenance instructions, spare parts support, and repair of the first article during any first article test.

(h) Before first article approval, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity is at the sole

nished by the Offeror/Contractor and have been accepted by the Government. The Offeror/Contractor may request a waiver.

(End of clause)

Alternate I (SEP 1989). As prescribed in 9.308-2(a)(2) and (b)(2), add the following paragraph (j) to the basic clause:

(j) The Contractor shall produce both the first article and the production quantity at the same facility and shall submit a certification to this effect with each first article.

Alternate II (SEP 1989). As prescribed in 9.308-2(a)(3) and (b)(3), substitute the following paragraph (h) for paragraph (h) of the basic clause:

(h) Before first article approval, the Contracting Officer may, by written authorization, authorize the Contractor to acquire specific materials or components or to commence production to the extent essential to meet the delivery schedules. Until first article approval is granted, only costs for the first article and costs incurred under this authorization are allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government. If first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes or replace all items produced under this contract at no change in the contract price.

52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.

As prescribed in 9.409(a), insert the following provision:

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (MAY 1989)

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that—

(i) The Offeror and/or any of its Principals—

(A) Are ☐ are not ☐ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ☐ have not ☐, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in con-

(FAC 90-8) 52-21

(C) Are ☐ are not ☐ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

(ii) The Offeror has ☐ has not ☐, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract result-

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WHEN SUBCONTRACTING WITH CONTRACTORS
DEBARRED, SUSPENDED, OR PROPOSED
FOR DEBARMENT (JUN 1991)

(a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of the small purchase limitation at FAR 13.000 with a Contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed the small purchase limitation at FAR 13.000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Procurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Procurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Procurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(End of clause)

52.209-7 Organizational Conflicts of Interest
Certificate—Marketing Consultants.

As prescribed in 9.507-1(b), insert the following provision:

ORGANIZATIONAL CONFLICTS OF INTEREST
CERTIFICATE—MARKETING CONSULTANTS
(NOV 1991)

(a) Definitions.

(1) "Marketing consultant" means any independent contractor who furnishes advice, information, direction, or assistance to an offeror or any other contractor in sup-

- (iii) Routine legal, actuarial, auditing, and accounting services; or
- (iv) Training services.

(2) Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) An individual or firm that employs, retains, or engages contractually one or more marketing consultants in connection with a contract, shall submit to the contracting officer, with respect to each marketing consultant, the certificates described below, if the individual or firm is notified that it is the apparent successful offeror.

(c) The certificate* must contain the following:

(1) The name of the agency and the number of the solicitation in question.

(2) The name, address, telephone number, and federal taxpayer identification number of the marketing consultant.

(3) The name, address, and telephone number of a responsible officer or employee of the marketing consultant who has personal knowledge of the marketing consultants involvement in the contract.

(4) A description of the nature of the services rendered by or to be rendered by the marketing consultant.

(5) The name, address, and telephone number of the client or clients, and the name of a responsible officer or employee of the marketing consultant who is knowledgeable about the services provided to such client(s), and a description of the nature of the services rendered to such client(s), if, based on information provided to the Contractor by the marketing consultant, any marketing consultant is rendering or, in the 12* months preceding the date of the certificate, has rendered services respecting the same subject matter of the instant solicitation, or directly relating to such subject matter, to the Government or any other client (including any foreign government or person).

* If approved by the head of the contracting activity, this period may be increased up to 36 months.

(6) A statement that the person who signs the certificate for the prime Contractor has informed the marketing consultant of the existence of Subpart 9.5 and Office

been told of the existence of Subpart 9.5 and Office of Federal Procurement Policy Letter 89-1, and the marketing consultant has made inquiry, and to the best of the consultant's knowledge and belief, the consultant has provided no unfair competitive advantage to the prime Contractor with respect to the services rendered or to be rendered in connection with the solicitation, or that any unfair competitive advantage that, to the best of the consultant's knowledge and belief, does or may exist, has been disclosed to the offeror.

(e) Failure of the offeror to provide the certifications may result in the offeror being determined ineligible for award. Misrepresentation of any fact may result in the assessment of penalties associated with false certifications or such other provisions provided for by law or regulation.

(End of provision)

52.209-8 Organizational Conflicts of Interest Certificate—Advisory and Assistance Services.

As prescribed in 9.507-1(c), insert the following provision:

ORGANIZATIONAL CONFLICTS OF INTEREST CERTIFICATE—ADVISORY AND ASSISTANCE SERVICES (NOV 1991)

(a) "Organizational conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) An offeror notified that it is the apparent successful offeror shall provide the certificate described in paragraph (c) of this provision.

(c) The certificate must contain the following:

(1) Name of the agency and the number of the solicitation in question.

(2) The name, address, telephone number, and federal taxpayer identification number of the apparent successful offeror.

(3) A description of the nature of the services rendered by or to be rendered on the instant contract.

(4) The name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client, if, in the 12*

* If approved by the head of the contracting activity, this period may be increased up to 36 months.

(5) A statement that the person who signs the certificate has made inquiry and that, to the best of his or her knowledge and belief, no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant contract, or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated in writing to the Contracting Officer or his or her representatives.

(6) The signature, name, employer's name, address, and telephone number of the person who signed the certificate.

(d) Failure of the offeror to provide the certification may result in the offeror being determined ineligible for award. Misrepresentation of any fact may result in the assessment of penalties associated with false certifications or such other provisions provided for by law or regulation.

(End of provision)

52.210-1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

As prescribed in 10.011(a), insert the following provision:

**AVAILABILITY OF SPECIFICATIONS LISTED IN
THE GSA INDEX OF FEDERAL SPECIFICATIONS,
STANDARDS AND COMMERCIAL ITEM
DESCRIPTIONS (JUN 1988)**

(a) A single copy of each specification cited in this solicitation is available without charge from the GSA Specifications Unit, 7th & D Sts., S.W., Washington, DC 20407 (Tel. 202-708-9205 or 708-7140), or from any of the General Services Administration Business Service Centers which are located in Boston, MA; New York, NY; Philadelphia, PA; Atlanta, GA; Chicago, IL; Kansas City, MO; Ft. Worth, TX; San Francisco, CA; Los Angeles, CA; and Auburn, WA. Additional copies may be purchased from the GSA Specifications Unit in Washington, DC.

(b) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(End of provision)

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Single copies of specifications cited in this solicitation may be obtained by submitting a written request to the supply point listed below. The request must contain the title of the specification, its number, date, applicable amendment(s), and the solicitation or contract number. A telephone order entry system is available with the use of a touch tone telephone. A Customer Number is required to use this system and may be obtained by written request to the address listed below or by telephone (215-697-2179). In case of urgency, telegraphic requests are acceptable. Voluntary standards, which are not available to offerors and contractors from Government sources, may be obtained from the organization responsible for their preparation, maintenance, or publication.

Standardization Document
Order Desk, Building 4, Section D
700 Robbins Avenue
Philadelphia, PA 19111-5094

Telex Number 834295

Western Union Number 710-670-1685

Telephone Number.....(215) 697-3321 (Express
shipment pickup)

Telephone Order Entry System (TOES) Numbers.....

215-697-1187 through and including 215-697-1197

(End of provision)

**52.210-3 Availability of Specifications Not Listed in the
GSA Index of Federal Specifications, Standards and
Commercial Item Descriptions.**

As prescribed in 10.011(c), insert a provision substantially the same as the following:

**AVAILABILITY OF SPECIFICATIONS NOT LISTED
IN THE GSA INDEX OF FEDERAL SPECIFICATIONS,
STANDARDS AND COMMERCIAL ITEM
DESCRIPTIONS (JUN 1988)**

The specifications cited in this solicitation may be obtained from:

(Activity) _____

(Complete address) _____

(Telephone number) _____

(Person to be contacted) _____

FAILURE TO SUBMIT BID (APR 1984)

Recipients of this solicitation not responding with a bid should not return this solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter or postcard whether they want to receive future solicitations for similar requirements. If a recipient does not submit a bid and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

(End of provision)

(R SF 33A, Para 6, 1978 JAN)

52.214-10 Contract Award—Sealed Bidding.

As prescribed in 14.201-6(e)(2), insert the following provision:

CONTRACT AWARD—SEALED BIDDING (JUL 1990)

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may (1) reject any or all bids, (2) accept other than the lowest bid, and (3) waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or group of items of a bid, unless the bidder qualifies the bid by specific limitations. *Unless otherwise provided in the Schedule, bids may be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the bidder specifies otherwise in the bid.*

(d) A written award or acceptance of a bid mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the bid shall result in a binding contract without further action by either party.

(e) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated

PREPARATION OF BIDS (APR 1984)

(a) Bidders are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the bidder's risk.

(b) Each bidder shall furnish the information required by the solicitation. The bidder shall sign the bid and print or type its name on the Schedule and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(c) For each item offered, bidders shall (1) show the unit price, including, unless otherwise specified, packaging, packing, and preservation and (2) enter the extended price for the quantity of each item offered in the "Amount" column of the Schedule. In case of discrepancy between a unit price and an extended price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

(d) Bids for supplies or services other than those specified will not be considered unless authorized by the solicitation.

(e) Bidders must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation.

(f) Time, if stated as a number of days, will include Saturdays, Sundays, and holidays

(End of provision)

(R SF 33A, Para 2, 1978 JAN)

52.214-13 Telegraphic Bids.

As prescribed in 14.201-6(g)(1), insert the following provision:

TELEGRAPHIC BIDS (APR 1984)

(a) Bidders may submit telegraphic bids as responses to this solicitation. These responses must arrive at the place, and by the time, specified in the solicitation.

(b) Telegraphic bids shall refer to this solicitation and include the items or subitems, quantities, unit prices, time and place of delivery, all representations and other information required by this solicitation, and a statement of agreement with all the terms, conditions, and provisions of the invitation for bids.

(c) Telegraphic bids that fail to furnish required representations or information, or that reject any of the terms,

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Alternate 1 (NOV 1988). As prescribed in 14.201-6(g)(2), substitute the following for paragraph (d) of the basic clause:

(d) Written confirmation of telegraphic bids is not required.

52.214-14 Place of Performance—Sealed Bidding.

As prescribed in 14.201-6(h), insert the following provision:

PLACE OF PERFORMANCE— SEALED BIDDING (APR 1985)

(a) The bidder, in the performance of any contract resulting from this solicitation, ☐ intends, ☐ does not intend [*check applicable box*] to use one or more plants or facilities located at a different address from the address of the bidder as indicated in this bid.

(b) If the bidder checks “intends” in paragraph (a) above, it shall insert in the spaces provided below the required information:

Place of Performance (Street, Address, City, County, State, Zip Code)	Name and Address of Owner and Operator of the Plant or Facility if Other than Bidder
.....
.....

(End of provision)

52.214-15 Period for Acceptance of Bids.

As prescribed in 14.201-6(i), insert the following provision:

PERIOD FOR ACCEPTANCE OF BIDS (APR 1984)

In compliance with the solicitation, the bidder agrees, if this bid is accepted within calendar days (60 calendar days unless a different period is inserted by the bidder) from the date specified in the solicitation for receipt of bids, to furnish any or all items upon which prices are bid at the price set opposite each item, delivered at the designated point(s), within the time specified in the Schedule.

(End of provision)
(R SF 33 1977 MAR)

52.214-16 Minimum Bid Acceptance Period.

As prescribed in 14.201-6(j), insert the following provision in invitations for bids, except for construction, if the

the acceptance period that may appear elsewhere in this solicitation.

(c) The Government requires a minimum acceptance period of calendar days [*the Contracting Officer shall insert the number of days*].

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the Government’s minimum requirement. The bidder allows the following acceptance period:

..... calendar days.

(e) A bid allowing less than the Government’s minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) of this clause or (2) any longer acceptance period stated in paragraph (d) of this clause.

(End of provision)

(R 2-201(a) Sec. L(xvii) (A) and (B) 1975 MAR)

(R 2-201(b)(xii)(B) 1975 MAR)

(R 1-2.201(a)(15))

52.214-17 Affiliated Bidders.

As prescribed in 14.201-6(k), insert the following provision:

AFFILIATED BIDDERS (APR 1984)

(a) Business concerns are affiliates of each other when, either directly or indirectly, (1) one concern controls or has the power to control the other, or (2) a third party controls or has the power to control both.

(b) Each bidder shall submit with its bid an affidavit stating that it has no affiliates, or containing the following information:

(1) The names and addresses of all affiliates of the bidder.

(2) The names and addresses of all persons and concerns exercising control or ownership of the bidder and any or all of its affiliates, and whether they exercise such control or ownership as common officers, directors, stockholders holding controlling interest, or otherwise.

(End of provision)
(R 7-2003.12 1974 APR)

52.214-18 Preparation of Bids—Construction.

As prescribed in 14.201-6(l), insert the following provision:

Contractor in substantial quantities to the general public in the course of normal business operations; (ii) The contract services are furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, and/or repair of certain ADP, scientific and medical, and/or office and business equipment. An "established catalog price" is a price included in a catalog, price list schedule, or other form that is regularly maintained by the manufacturer or the Contractor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public. An "established market price" is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or Contractor; and (iii) The Contractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the Contractor uses for equivalent employees servicing the same equipment of commercial customers.

(b) If a negative certification is made and a Service Contract Act wage determination is not attached to the solicitation, the Contractor shall notify the Contracting Officer as soon as possible.

(c) Failure to execute the certification in paragraph (a) of this clause or to contact the Contracting Officer as required in paragraph (b) of this clause may render the bid or offer nonresponsive.

(End of clause)

52.222-49 Service Contract Act—Place of Performance Unknown.

As prescribed in 22.1006(f) and 22.1009-4(c), insert the following clause:

SERVICE CONTRACT ACT—PLACE OF PERFORMANCE UNKNOWN (MAY 1989)

(a) This contract is subject to the Service Contract Act, and the place of performance was unknown when the solicitation was issued. In addition to places or areas identified in wage determinations, if any, attached to the solicitation, wage determinations have also been requested for the following: (insert places or areas). The Contracting Officer will request wage determinations for additional places or areas of performance if asked to do so in writing by (insert time and date).

(b) Offerors who intend to perform in a place or area of performance for which a wage determination has not been

As prescribed in 23.105(a), insert the following provision in solicitations containing the clause at 52.223-2, Clean Air and Water.

CLEAN AIR AND WATER CERTIFICATION (APR 1984)

The Offeror certifies that—

(a) Any facility to be used in the performance of this proposed contract is ☐, is not ☐ listed on the Environmental Protection Agency (EPA) List of Violating Facilities;

(b) The Offeror will immediately notify the Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the EPA, indicating that any facility that the Offeror proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and

(c) The Offeror will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

(End of provision)

(AV 7-2003.71 1977 JUN)

(AV 1-1.2302-1)

52.223-2 Clean Air and Water.

As prescribed in 23.105(b), insert the following clause in solicitations and contracts to which Subpart 23.1 applies (see 23.101) if (a) the contract is expected to exceed \$100,000; (b) the contracting officer believes that orders under an indefinite quantity contract in any year will exceed \$100,000; or (c) a facility to be used has been the subject of a conviction under the applicable portion of the Air Act (42 U.S.C. 7413(c)(1)) or the Water Act (33 U.S.C. 1319(c)) and is listed by the Environmental Protection Agency as a violating facility; and (d) the acquisition is not otherwise exempt under 23.104.

CLEAN AIR AND WATER (APR 1984)

(a) "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. 7401, et seq.).

"Clean air standards," as used in this clause, means—

(1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;

(2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));

(3) An approved implementation procedure or plan

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authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

"Compliance," as used in this clause, means compliance with—

(1) Clean air or water standards; or

(2) A schedule or plan ordered or approved by a court of competent jurisdiction, the EPA, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the EPA determines that independent facilities are collocated in one geographical area.

"Water Act," as used in this clause, means Clean Water Act (33 U.S.C. 1251, et seq.).

(b) The Contractor agrees—

(1) To comply with the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;

(2) That no portion of the work required by this prime contract will be performed in a facility listed on the EPA List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and

(4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

(End of clause)

(R 7-103.29 1975 OCT)

(R 1-1.2302)

during the term of the contract.

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material (If none, insert "None")	Identification No.
--------------------------------------	--------------------

_____	_____
_____	_____
_____	_____

(c) The apparently successful offeror, by acceptance of the contract, certifies that the list in paragraph (b) of this clause is complete. This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause or the certification submitted under paragraph (c) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

this clause is applicable. The purposes of this right are to—

- (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
 - (ii) Obtain medical treatment for those affected by the material; and
 - (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.
- (2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.
- (3) The Government is not precluded from using similar or identical data acquired from other sources.

(End of clause)

Alternate I (NOV 1991). If the contract is awarded by an agency other than the Department of Defense, add the following paragraph (i) to the basic clause:

(i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

(1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to mail MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

52.223-4 Recovered Material Certification.

As prescribed in 23.405, insert the following provision in solicitations that incorporate specifications requiring the use of recovered materials.

RECOVERED MATERIAL CERTIFICATION (APR 1984)

The offeror certifies, by signing this offer, that recovered materials, as defined in section 23.402 of the

CERTIFICATION REGARDING A DRUG-FREE WORKPLACE (JUL 1990)

(a) Definitions. As used in this provision,

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) By submission of its offer, the offeror, if other than an individual, who is making an offer that equals or exceeds \$25,000, certifies and agrees, that with respect to all employees of the offeror to be employed under a contract resulting from this solicitation, that, it will— no later than 30 calendar days after contract award (unless a longer period is agreed to in writing), for contracts of 30 calendar days or more performance duration; or as soon as possible for contracts of less than 30 calendar days performance duration, but in any case, by a date prior to when performance is expected to be completed—

(1) Publish a statement notifying such employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of

(2) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this provision;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this provision, that as a condition of continued employment on the contract resulting from this solicitation, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction;

(5) Notify the Contracting Officer in writing within 10 calendar days after receiving notice under subdivision (b)(4)(ii) of this provision, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee; and

(6) Within 30 calendar days after receiving notice under subdivision (b)(4)(ii) of this provision of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Take appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this provision.

(c) By submission of its offer, the offeror, if an individual who is making an offer of any dollar value, certifies and agrees that the offeror will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the contract resulting from this solicitation.

(d) Failure of the offeror to provide the certification required by paragraphs (b) or (c) of this provision, renders the offeror unqualified and ineligible for award. (See FAR 9.104-1(g) and 19.602-1(a)(2)(i).)

(e) In addition to other remedies available to the

As prescribed in 23.505(b), insert the following clause:
DRUG-FREE WORKPLACE (JUL 1990)

(a) Definitions. As used in this clause,

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall—within 30 calendar days after award (unless a longer period is agreed to in writing for contracts of 30 calendar days or more performance duration), or as soon as possible for contracts of less than 30 calendar days performance duration—

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation,

required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction.

(5) Notify the Contracting Officer in writing within 10 calendar days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 calendar days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

(End of clause)

52.223-7 Notice of Radioactive Materials.

As prescribed in 23.602, insert the following clause:

NOTICE OF RADIOACTIVE MATERIALS (NOV 1991)

(a) The Contractor shall notify the Contracting Officer or designee, in writing, _____* days prior to the

per gram of the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

* The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that required licenses are obtained and appropriate personnel are notified to institute any necessary safety and health precautions. See FAR 23.601(d).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall—

(1) Be submitted in writing;

(2) Contain a certification that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and

(3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

(End of clause)

52.224-1 Privacy Act Notification.

As prescribed in 24.104, insert the following clause in solicitations and contracts, when the design, development, or operation of a system of records on individuals is required to accomplish an agency function:

PRIVACY ACT NOTIFICATION (APR 1984)

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish

As prescribed in 24.104, insert the following clause in solicitations and contracts, when the design, development, or operation of a system of records on individuals is required to accomplish an agency function:

PRIVACY ACT (APR 1984)

(a) The Contractor agrees to—

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies—

(i) The systems of records; and

(ii) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

(c)(1) "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that con-

number, symbol, or other identifying particular assigned to the individual.

(End of clause)

(AV 7-104.96 1975 NOV)

(AV 1-1.327-5(c))

52.225-1 Buy American Certificate.

As prescribed in 25.109(a), insert the following provision:

BUY AMERICAN CERTIFICATE (DEC 1989)

The offeror certifies that each end product, except those listed below, is a domestic end product (as defined in the clause entitled "Buy American Act—Supplies"), and that components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

Excluded End Products

Country of Origin

.....
.....
.....

(List as necessary)

Offerors may obtain from the contracting officer lists of articles, materials, and supplies excepted from the Buy American Act.

(End of provision)

52.225-2 Waiver of Buy American Act for Civil Aircraft and Related Articles.

As prescribed in 25.109(c), insert the following provision in solicitations for the acquisition of civil aircraft and related articles:

WAIVER OF BUY AMERICAN ACT FOR CIVIL AIRCRAFT AND RELATED ARTICLES (APR 1984)

(a) "Civil aircraft and related articles," as used in this provision, means—

(1) All aircraft other than aircraft to be purchased for use by the Department of Defense or the U.S. Coast Guard;

(2) The engines (and parts and components for incorporation into the engines) of these aircraft;

(3) Any other parts, components, and subassemblies for incorporation into the aircraft; and

(4) Any ground flight simulators, and parts and components of these simulators, for use with respect to the

and related articles (as defined in paragraph (a) above) of countries or instrumentalities that are parties to the Agreement on Trade in Civil Aircraft. As of January 1, 1981, those countries and instrumentalities include Austria, Canada, the European Economic Community (Belgium, Denmark, the Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom), Japan, Norway, Romania, Sweden, and Switzerland.

(c) For the purpose of this waiver, an article is a product of a country or instrumentality only if—

(1) It is wholly the growth, product, or manufacture of that country or instrumentality; or

(2) In the case of an article that consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the articles from which it was so transformed.

(d) The waiver is subject to modification or withdrawal by the U.S. Trade Representative.

(End of provision)

(R 1-6.601-1)

52.225-3 Buy American Act—Supplies.

As prescribed in 25.109(d), insert the following clause:

BUY AMERICAN ACT—SUPPLIES (JAN 1989)

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.

“Components,” as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

“Domestic end product,” as used in this clause, means

(1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in

value, components of Canadian origin are treated as domestic.

“End products,” as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

(b) The Contractor shall deliver only domestic end products, except those—

(1) For use outside the United States;

(2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the agency determines that domestic preference would be inconsistent with the public interest; or

(4) For which the agency determines the cost to be unreasonable (see section 25.105 of the Federal Acquisition Regulation).

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954, as amended, and Subpart 25.1 of the Federal Acquisition Regulation.)

(End of clause)

52.225-4 Reserved.

52.225-5 Buy American Act—Construction Materials.

As prescribed in 25.205, insert the following clause in solicitations and contracts for construction inside the United States:

BUY AMERICAN ACT—CONSTRUCTION MATERIALS (APR 1984)

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic construction material.

(The next page is 52-115.)

Funds are not presently available for performance under this contract beyond The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond , until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

(SS 7-104.91(b) 1975 JUN)

52.232-20 Limitation of Cost.

As prescribed in 32.705-2(a), insert the following clause in solicitations and contracts if a fully funded cost-reimbursement contract is contemplated, except those for consolidated facilities, facilities acquisition, or facilities use, whether or not the contract provides for payment of a fee. The 60-day period may be varied from 30 to 90 days and the 75 percent from 75 to 85 percent. "Task Order" or other appropriate designation may be substituted for "Schedule" wherever that word appears in the clause.

LIMITATION OF COST (APR 1984)

(a) The parties estimate that performance of this contract, exclusive of any fee, will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government's and the Contractor's share of the cost.

(b) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that—

(1) The costs the Contractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or

(2) The total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

(c) As part of the notification, the Contractor shall provide the Contracting Officer a revised estimate of the total cost of performing this contract.

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Contracting Officer (i) notifies the Contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(e) No notice, communication, or representation in any form other than that specified in subparagraph (d)(2) above, or from any person other than the Contracting Officer, shall affect this contract's estimated cost to the Government. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the estimated cost or, if this is a cost-sharing contract, for any costs in excess of the estimated cost to the Government specified in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination.

(f) If the estimated cost specified in the Schedule is increased, any costs the Contractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

(g) Change orders shall not be considered an authorization to exceed the estimated cost to the Government specified in the Schedule, unless they contain a statement increasing the estimated cost.

(h) If this contract is terminated or the estimated cost is not increased, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(End of clause)

(R 7-203.3(a) 1966 OCT)

(R 7-402.2(a) 1966 OCT)

(R 7-402.2(b) 1973 MAY)

(R 1-7.202-3(a))

(R 1-7.402-2(a) & (b))

52.232-21 Limitation of Cost (Facilities).

As prescribed in 32.705-2(b), insert the following clause

(b) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that—

(1) The costs that the Contractor expects to incur under this contract in the next 30 days, when added to all costs previously incurred, will exceed 85 percent of the estimated cost specified in the Schedule; or

(2) The total cost to the Government for the performance of this contract will be either greater or substantially less than had previously been estimated.

(c) As part of the notification, the Contractor shall provide the Contracting Officer a revised estimate of the total cost of performing this contract.

(d) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—

(1) The Government is not obligated to reimburse the contractor for costs incurred in excess of the estimated cost specified in the Schedule; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Contracting Officer (i) notifies the Contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract.

(e) No notice, communication, or representation in any form other than specified in paragraph (d)(2) of this clause, or from any person other than the Contracting Officer, shall affect this contract's estimated cost to the Government. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the estimated cost, whether those excess costs were incurred during the course of the contract or as a result of termination.

(f) If the estimated cost specified in the Schedule is increased, any costs the Contractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

(g) Change orders shall not be considered an authorization to exceed the estimated cost to the Government specified in the Schedule, unless they contain a statement increasing the estimated cost.

(End of clause)

(R 7-702.11)

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(a) The parties estimate that performance of this contract will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government's and the Contractor's share of the cost.

(b) The Schedule specifies the amount presently available for payment by the Government and allotted to this contract, the items covered, the Government's share of the cost if this is a cost-sharing contract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Government will allot additional funds incrementally to the contract up to the full estimated cost to the Government specified in the Schedule, exclusive of any fee. The Contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the Government under the contract approximates but does not exceed the total amount actually allotted by the Government to the contract.

(c) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the contract by the Government or, (2) if this is a cost-sharing contract, the amount then allotted to the contract by the Government plus the Contractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

(d) Sixty days before the end of the period specified in the Schedule, the Contractor shall notify the Contracting Officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the contract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Contractor's written request the Contracting Officer will terminate this contract

DIFFERING SITE CONDITIONS (APR 1984)

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; *provided*, that the time prescribed in paragraph (a) of this clause for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

(End of clause)

(R 7-602.4 1968 FEB)

(R 1-7.602-4)

52.236-3 Site Investigation and Conditions Affecting the Work.

As prescribed in 36.503, insert the following clause in solicitations and contracts when a fixed-price construction contract or fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The Contracting Officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

**SITE INVESTIGATION AND CONDITIONS
AFFECTING THE WORK (APR 1984)**

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as

work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

(b) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

(End of clause)

(R 7-602.14 1964 JUN)

(R 1-7.602-14)

(R 7-602.33 1965 JAN)

52.236-4 Physical Data.

As prescribed in 36.504, insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated and physical data (e.g., test borings, hydrographic, weather conditions data) will be furnished or made available to offerors. All information to be furnished or made available to offerors before award that pertains to the performance of the work should be identified in the clause. When subparagraphs are not applicable they may be deleted.

PHYSICAL DATA (APR 1984)

Data and information furnished or referred to below is for the Contractor's information. The Government shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

(a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations by [insert a description of *investigational methods used, such as surveys, auger borings, core borings, test pits, probings, test tunnels*].

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52.236-5 Material and Workmanship.

As prescribed in 36.505, insert the following clause:

MATERIAL AND WORKMANSHIP (APR 1984)

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

(End of clause)

(R 7-602.9 1964 JUN)

52.236-6 Superintendence by the Contractor.

As prescribed in 36.506, insert the following clause in

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and the contract amount is expected to be within the small purchase limitation.

SUPERINTENDENCE BY THE CONTRACTOR

(APR 1984)

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the worksite a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

(End of clause)

(R 7-602.12 1978 OCT)

(R 1-7.602-12)

52.236-7 Permits and Responsibilities.

As prescribed in 36.507, insert the following clause:

PERMITS AND RESPONSIBILITIES (NOV 1991)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(End of clause)

52.236-8 Other Contracts.

As prescribed in 36.508, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

OTHER CONTRACTS (APR 1984)

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the

52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.

As prescribed in 36.509, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

**PROTECTION OF EXISTING VEGETATION,
STRUCTURES, EQUIPMENT, UTILITIES, AND
IMPROVEMENTS (APR 1984)**

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site, and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

(End of clause)
(R 7-602.34 1965 JAN)
(7-2101.13 1976 OCT)

52.236-10 Operations and Storage Areas.

As prescribed in 36.510, insert the following clause in solicitations and contracts when a fixed-price construction

tion.

OPERATIONS AND STORAGE AREAS (APR 1984)

(a) The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Government. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

(End of clause)
(R 7-602.35 1965 JAN)

52.236-11 Use and Possession Prior to Completion.

As prescribed in 36.511, insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated and the contract award amount is expected to exceed the small purchase limitation. This clause may be inserted in solicitations and contracts when the contract amount is expected to be within the small purchase limitation.

**USE AND POSSESSION PRIOR TO COMPLETION
(APR 1984)**

(a) The Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to

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of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

(End of clause)
(R 7-602.39 1976 OCT)
(1-7.602.31)

52.236-12 Cleaning Up.

As prescribed in 36.512, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

CLEANING UP (APR 1984)

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

(End of clause)
(R 7-602.40 1965 JAN)
(R 7-2101.21 1976 OCT)

52.236-13 Accident Prevention.

As prescribed in 36.513, insert the following clause:

ACCIDENT PREVENTION (NOV 1991)

(a) The Contractor shall provide and maintain work environments and procedures which will (1) safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities; (2) avoid interruptions of Government operations and delays in project completion dates; and (3) control costs in the performance of this contract.

(b) For these purposes on contracts for construction or

Contracting Officer determines to be reasonably necessary for the purposes are taken.

(c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

(d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

(e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

(End of clause)

Alternate I (NOV 1991). If the contract will involve (a) work of a long duration or hazardous nature, or (b) performance on a Government facility that on the advice of technical representatives involves hazardous materials or operations that might endanger the safety of the public and/or Government personnel or property, add the following paragraph (f) to the basic clause:

(f) Before commencing the work, the Contractor shall—

(1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and

(2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

and the contractor, and (b) furnishing it is in the Government's interest. When this clause is used, the contracting officer shall list the available utilities in the contract.

AVAILABILITY AND USE OF UTILITY SERVICES

(APR 1984)

(a) The Government shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Government, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

(End of clause)

(R 7-603.30 1967 APR)

(R 7-2102.4 1976 OCT)

52.236-15 Schedules for Construction Contracts.

As prescribed in 36.515, the Contracting Officer may insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated, the contract amount is expected to exceed the small purchase limitation, and the period of actual work performance exceeds 60 days. This clause may be inserted in such contracts when work performance is expected to last less than 60 days and an unusual situation exists that warrants impositions of the requirements. This clause should not be used in the same contract with clauses covering other management approaches for ensuring that a contractor makes adequate progress.

SCHEDULES FOR CONSTRUCTION CONTRACTS

(APR 1984)

(a) The Contractor shall, within five days after the work commences on the contract or another period of time deter-

minately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

(End of clause)

(R 7-603.48 1965 JAN)

52.236-16 Quantity Surveys.

As prescribed in 36.516, the contracting officer may insert the following clause in solicitations and contracts when a fixed-price construction contract providing for unit pricing of items and for payment based on quantity surveys is contemplated:

QUANTITY SURVEYS (APR 1984)

(a) Quantity surveys shall be conducted, and the data derived from these surveys shall be used in computing the quantities of work performed and the actual construction completed and in place.

(b) The Government shall conduct the original and final surveys and make the computations based on them. The

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shall furnish the originals of all field notes and all other records relating to the survey or to the layout of the work to the Contracting Officer, who shall use them as necessary to determine the amount of progress payments. The Contractor shall retain copies of all such material furnished to the Contracting Officer.

(End of clause)

(R 7-603.50(a) 1979 MAR)

Alternate I (APR 1984). If it is determined at a level above that of the Contracting Officer that it is impracticable for Government personnel to perform the original and final surveys, and the Government wishes the Contractor to perform these surveys, substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Contractor shall conduct the original and final surveys and surveys for any periods for which progress payments are requested. All these surveys shall be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance. The Government shall make such computations as are necessary to determine the quantities of work performed or finally in place. The Contractor shall make the computations based on the surveys for any periods for which progress payments are requested.

(R 7-603.50(b) 1979 MAR)

52.236-17 Layout of Work.

As prescribed in 36.517, insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated and use of this clause is appropriate due to a need for accurate work layout and for siting verification during work performance:

LAYOUT OF WORK (APR 1984)

The Contractor shall lay out its work from Government established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and

52.236-18 Work Oversight in Cost-Reimbursement Construction Contracts.

As prescribed in 36.518, insert the following clause in solicitations and contracts when cost-reimbursement construction contracts are contemplated:

WORK OVERSIGHT IN COST-REIMBURSEMENT-CONSTRUCTION CONTRACTS (APR 1984)

The extent and character of the work to be done by the Contractor shall be subject to the general supervision, direction, control, and approval of the Contracting Officer.

(End of clause)

(V 7-607.15 1965 JAN)

(R 7-605.16 1965 JAN)

52.236-19 Organization and Direction of the Work.

As prescribed in 36.519, insert the following clause in solicitations and contracts when a cost-reimbursement construction contract is contemplated:

ORGANIZATION AND DIRECTION OF THE WORK (APR 1984)

(a) When this contract is executed, the Contractor shall submit to the Contracting Officer a chart showing the general executive and administrative organization, the personnel to be employed in connection with the work under this contract, and their respective duties. The Contractor shall keep the data furnished current by supplementing it as additional information becomes available.

(b) Work performance under this contract shall be under the full-time resident direction of (1) the Contractor, if the Contractor is an individual; (2) one or more principal partners, if the Contractor is a partnership; or (3) one or more senior officers, if Contractor is a corporation, association, or similar legal entity. However, if the Contracting Officer approves, the Contractor may be represented in the direction of the work by a specific person or persons holding positions other than those identified in this paragraph.

(End of clause)

(R 7-605.7 1977 DEC)

(R 7-605.25 1965 JAN)

52.236-20 Reserved.

bursement based on a quoted differential.

(4) Offeror's differentials in cents for each 100 pounds for optional mode of transportation, types of vehicle, transportation within a mode, or place of delivery, specified by the Government at the time of shipment and not included in the f.o.b. origin price indicated in the Schedule by the offeror, are as follows:

_____ (carload, truckload, less-load,

_____ wharf, flatcar, driveaway, etc.)

(End of clause)

52.247-34 F.o.b. Destination.

As prescribed in 47.303-6(c), insert the following clause:

F.O.B. DESTINATION (NOV 1991)

(a) The term "f.o.b. destination," as used in this clause, means—

(1) Free of expense to the Government, on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and

(2) Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggy-back") is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee, except when the supplies delivered meet the requirements of Item 568 of the National Motor Freight Classification for "heavy or bulky freight." When supplies meeting the requirements of the referenced Item 568 are delivered, unloading (including movement to the tailgate) shall be performed by the consignee, with assistance from the truck driver, if requested. If the contractor uses rail carrier or freight forwarded for less than carload shipments, the contractor shall ensure that the carrier will furnish tailgate delivery, when required, if transfer to truck is required to complete delivery to consignee.

(4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;

(5) Furnish a delivery schedule and designate the mode of delivering carrier; and

(6) Pay and bear all charges to the specified point of delivery.

(End of clause)

52.247-35 F.o.b. Destination, within Consignee's Premises.

As prescribed in 47.303-7(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. destination, within consignee's premises:

F.O.B. DESTINATION, WITHIN CONSIGNEE'S PREMISES (APR 1984)

(a) The term "f.o.b. destination, within consignee's premises," as used in this clause, means free of expense to the Government delivered and laid down within the doors of the consignee's premises, including delivery to specific rooms within a building if so specified.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;

(2) Prepare and distribute commercial bills of lading;

(3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;

(5) Furnish a delivery schedule and designate the mode of delivering carrier; and

(6) Pay and bear all charges to the specified point of delivery.

(End of clause)

(R 1-19.306(a)(2) and (b))

52.247-36 F.a.s. Vessel, Port of Shipment.

As prescribed in 47.303-8(c), insert the following clause in solicitations and contracts when the delivery term is f.a.s. vessel, port of shipment:

F.A.S. VESSEL, PORT OF SHIPMENT (APR 1984)

(a) The term "f.a.s. vessel, port of shipment," as used in this clause, means free of expense to the Government

assessment of the lowest applicable transportation charge;

(2)(i) Deliver the shipment in good order and condition alongside the ocean vessel and within reach of its loading tackle, at the point of delivery and on the date or within the period specified in the contract; and

(ii) Pay and bear all applicable charges, including transportation costs, wharfage, handling, and heavy lift charges, if necessary, up to this point;

(3) Provide a clean dock or ship's receipt;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point specified in the contract; and

(5) At the Government's request and expense, assist obtaining the documents required for (i) exportation or (ii) importation at destination.

(End of clause)

(R 1-19.308)

52.247-37 F.o.b. Vessel, Port of Shipment.

As prescribed in 47.303-9(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. vessel, port of shipment:

F.O.B. VESSEL, PORT OF SHIPMENT (APR 1984)

(a) The term "f.o.b. vessel, port of shipment," as used in this clause, means free of expense to the Government loaded, stowed, and trimmed on board the ocean vessel at the specified port of shipment.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2)(i) Deliver the shipment on board the ocean vessel in good order and condition on the date or within the period fixed; and

(ii) Pay and bear all charges incurred in placing the shipment actually on board;

(3) Provide a clean ship's receipt or on-board ocean bill of lading;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment on board the ocean vessel; and

(5) At the Government's request and expense, assist in obtaining the documents required for (i) exportation or (ii) importation at destination.

52-268 (FAC 90-8)

(a) The term "f.o.b. inland carrier, point of exportation," as used in this clause, means free of expense to the Government, on board the conveyance of the inland carrier, delivered to the specified point of exportation.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) Prepare and distribute commercial bills of lading;

(3)(i) Deliver the shipment in good order and condition in or on the conveyance of the carrier on the date or within the period specified; and

(ii) Pay and bear all applicable charges, including transportation costs, to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point of delivery in the contract; and

(5) At the Government's request and expense, assist in obtaining the documents required for (i) exportation or (ii) importation at destination.

(End of clause)

(R 1-19.309)

52.247-39 F.o.b. Inland Point, Country of Importation.

As prescribed in 47.303-11(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. inland point, country of importation:

F.O.B. INLAND POINT, COUNTRY OF IMPORTATION (APR 1984)

(a) The term "f.o.b. inland point, country of importation," as used in this clause, means free of expense to the Government, on board the indicated type of conveyance of the carrier, delivered to the specified inland point where the consignee's facility is located.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods;

(2)(i) Deliver, in or on the inland carrier's conveyance, the shipment in good order and condition to the specified inland point where the consignee's facility is located; and

Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract											
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	FP T&M	CR T&M	LMV	COM
52.223-1 Clean Air and Water Certification.	23.105(a)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A
52.223-2 Clean Air and Water.	23.105(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A
52.223-3 Hazardous Material Identification and Material Safety Data.	23.303	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A
52.223-4 Recovered Material Certification.	23.405	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A
52.223-5 Certification Regarding A Drug-Free Workplace.	23.505(a)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A
52.223-6 Drug-Free Workplace.	23.505(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A
52.223-7 Notice of Radioactive Materials	23.602	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A
52.224-1 Privacy Act Notification.	24.104(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A
52.224-2 Privacy Act.	24.104(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A
52.225-1 Buy American Certificate.	25.109(a)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A
52.225-2 Waiver of Buy American Act for Civil Aircraft and Related Articles.	25.109(c)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A
52.225-3 Buy American Act—Supplies.	25.109(d)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A
52.225-4 Reserved.																
52.225-5 Buy American Act—Construc- tion Materials.	25.205	C	Yes	—												
52.225-6 Balance of Payments Program Certificate.	25.305(a)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A
52.225-7 Balance of Payments Program.	25.305(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A
52.225-8 Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate.	25.407(a)(1)	P	No	K												
52.225-9 Buy American Act—Trade Agreements Act—Balance of Payments Program.	25.407(a)(2)	C	Yes	I	A	A										
52.225-10 Duty-Free Entry.	25.605(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A

Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract													
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	LMV LH	COM SVC	DDR A-E			
52.227-8 Reserved.																		
52.227-9 Refund of Royalties.	27.206-2	C	Yes	I	A		A		A		A			A	A			

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53.301-1433	SF 1433, Inventory Schedule D - Continuation Sheet (Special Tooling and Special Test Equipment).	53.303-DD-441	Department of Defense DD Form 441, Security Agreement.
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(Metals in Mill Product Form)
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SF 1431 Inventory Schedule C - Continuation Sheet
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SF 1432 Inventory Schedule D (Special Tooling and
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SF 1438 Settlement Proposal (Short Form)
SF 1439 Schedule of Accounting Information
SF 1440 Application for Partial Payment
OF 90 Release of Lien on Real Property
OF 91 Release of Personal Property from Escrow
OF 333 Procurement Integrity Certification for
Procurement Officials.

1. The FAR contains all forms authorized for local reproduction. Use these illustrations of forms to produce copies for use as necessary. These forms are not stocked by GSA. FAR subscribers receive these forms as they are issued in Federal Acquisition Circulars.

2. FAR users who do not subscribe to the FAR should obtain copies of other standard or optional forms from the contracting officers with whom they are working or contact the appropriate agency's procurement office.

3. Contracting officers should obtain copies of all necessary forms from GSA's Business Service Centers in their regions.

4. For problems in obtaining copies, please notify the FAR Secretariat.

Submission of forms and comments: Comments or suggestions regarding forms should be sent to the addresses appearing at the top of most forms. Follow the directions under "INSTRUCTIONS" on where to mail completed forms. These instructions may be located on either the front or back of the form.

How to reproduce: All forms authorized for local reproduction should be legibly copied on the front and back because essential information may be contained on both sides.

53.000 Scope of part.

This part (a) prescribes standard forms (SF's) and references optional forms (OF's) and agency-prescribed forms for use in acquisition, (b) contains requirements and information generally applicable to the forms, and (c) illustrates the forms.

53.001 Definitions.

"Exception," as used in this part, means an approved departure from the established design, content, printing specifications, or conditions for use of any standard form.

SUBPART 53.1—GENERAL

53.100 Scope of subpart.

This subpart contains requirements and information generally applicable to the forms prescribed in this regulation.

53.101 Requirements for use of forms.

The requirements for use of the forms prescribed or referenced in this part are contained in Parts 1 through 52, where the subject matter applicable to each form is addressed. The specific location of each requirement is identified in Subpart 53.2 and under "Forms" in the FAR Index.

53.102 Current editions.

The form prescriptions in Subpart 53.2 and the illustrations in Subpart 53.3 contain current edition dates. Contracting officers shall use the current editions unless otherwise authorized under this regulation.

53.103 Exceptions.

Agencies shall not (a) alter a standard form prescribed by this regulation, or (b) use for the same purpose any form other than the standard form prescribed by this regulation without receiving in advance an exception to the form (see 41 CFR 201-45.510).

53.104 Overprinting.

Standard and optional forms (obtained as required by 53.107) may be overprinted with names, addresses, and other uniform entries that are consistent with the purpose of the form and that do not alter the form in any way. Exception approval for overprinting is not needed.

(a) Agencies may computer-generate the standard and optional forms prescribed in the FAR without exception approval (see 53.103), providing there is no change to the name, content, or sequence of the data elements, and the form carries the standard or optional form number and edition date. Agencies shall notify the FAR Secretariat of their decisions to computer-generate forms prescribed by the FAR.

(b) The forms prescribed by this regulation may be computer generated by the public. Unless prohibited by agency regulations, forms prescribed by agency FAR supplements may also be computer generated by the public. Computer generated forms shall not change the name, content, or sequence of the data elements, and shall carry the Standard or Optional Form or agency number and edition date (see 53.111).

Standard Forms	Special Construction and Printing
(a) SF 18—.....	(1) With vertical lines omitted (for listing of supplies and services, unit, etc.); (2) As reproducible masters; and/or (3) In carbon interleaved pads or sets.
(b) SF's 26, 30, 33, 1447—.....	As die-cut stencils or reproducible masters.
(c) SF 44—.....	(1) With serial numbers and contracting office name and address; and/or (2) On special weight of paper and with the type of construction, number of sets per book, and number of parts per set as specified by the contracting officer. (Executive agencies may supplement the administrative instructions on the inside front cover of the book.)
(d) SF 1442—.....	(1) As die-cut stencils or reproducible masters; and/or (2) With additional wording as required by the executive agency. (However, the sequence and wording of the items appearing on the prescribed form should not be altered).

using GSA Supply Catalog - Office Products (see 41 CFR 101-26.302). Standard forms adapted for computer preparation (see 53.105) or with special construction and printing (see 53.106) that are not available from GSA may be ordered directly from the Government Printing Office (GPO).

(b) Contractors and other parties may obtain standard and optional forms from the Superintendent of Documents, GPO, Washington, DC 20402. Standard and optional forms not available from the Superintendent of Documents may be obtained from the prescribing agency.

(c) Agency forms may be obtained from the prescribing agency.

53.108 Recommendations concerning forms.

Users of this regulation may recommend new forms or the revision, elimination, or consolidation of the forms prescribed or referenced in this regulation. Recommendations from within an executive agency shall be submitted to the cognizant council in accordance with agency procedures. Recommendations from other than executive agencies should be submitted directly to the FAR Secretariat.

53.109 Forms prescribed by other regulations.

Certain forms referred to in Subpart 53.2 are prescribed in other regulations and are specified by the FAR for use in acquisition. For each of these forms, the prescribing agency is identified by means of a parenthetical notation after the form number. For example, SF 1165, which is prescribed by the General Accounting Office (GAO), is identified as SF 1165 (GAO).

53.110 Continuation sheets.

Except as may be otherwise indicated in the FAR, all standard forms prescribed by the FAR may be continued on (a) plain paper of similar specification, or (b) specially constructed continuation sheets (e.g., OF 336). Continuation sheets shall be annotated in the upper right-hand corner with the reference number of the document being continued and the serial page number.

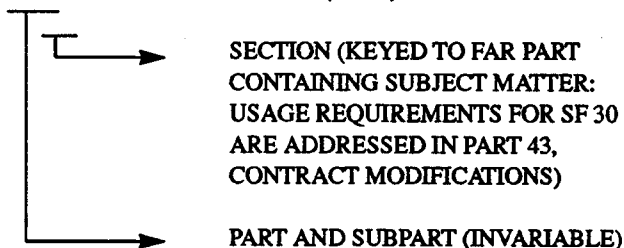
53.111 Contract clause.

Contracting officers shall insert the clause at 52.253-1, Computer Generated Forms, in solicitations and contracts that require the contractor to submit data on Standard or Optional Forms prescribed by this regulation; and, unless prohibited by agency regulations, forms prescribed by agency supplements.

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which the form usage requirements are addressed. For example, forms addressed in FAR Part 14, Sealed Bidding, are treated in this subpart in section 53.214, Sealed Bidding; forms addressed in FAR Part 43, Contract Modifications, are treated in this subpart in section 53.243, Contract modifications. The following example illustrates how the subjects are keyed to the parts in which they are addressed:

53.243 Contract Modifications (SF 30).



53.201 Federal acquisition system.

53.201-1 Contracting authority and responsibilities (SF 1402).

SF 1402 (10/83), *Certificate of Appointment*. SF 1402 is prescribed for use in appointing contracting officers, as specified in 1.603-3.

53.202 Reserved

53.203 Improper business practices and personal conflicts of interest.

(a) SF 119 (REV. 1/90), *Statement of Contingent or Other Fees*. SF 119 is prescribed for use in obtaining information as to whether improper influence has been used in obtaining Government contracts, as specified in 3.405(b)(5).

(b) OF 333 (9/90), *Procurement Integrity Certification for Procurement Officials*. OF 333 is prescribed for use, as specified in 3.104-12(a)(3). Pending issuance of a new edition of the form, the date in the authorization for use and local reproduction statement at the bottom of the form is revised to read March 31, 1991.

53.204 Administrative matters.

53.204-1 Safeguarding classified information within industry (DD Form 254, DD Form 441).

The following forms, which are prescribed by the Department of Defense, shall be used by agencies covered

APPENDIX A

ACQUISITION OF FEDERAL INFORMATION PROCESSING (FIP) RESOURCES BY CONTRACTING

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